

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

MAR 07 1990

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRENCH LIMITED, INC.,
FRENCH LIMITED OF HOUSTON, INC.,
LUTHER P. HENDON, INDIVIDUALLY,
GEORGE A. WHITTEN, INDIVIDUALLY,
ALLIED-SIGNAL, INC.,
AMERADA HESS CORPORATION,
AMERICAN PLANT FOOD CORPORATION,
AMOCO GAS COMPANY,
ARCO CHEMICAL COMPANY,
ARMCO INC.,
ASHLAND CHEMICAL COMPANY,
ATLANTIC RICHFIELD COMPANY,
BERWIND RAILWAY SERVICE COMPANY,
BIEHL & CO.,
BIG THREE INDUSTRIES, INC.,
BROWN & ROOT, INC.,
BROWNING-FERRIS INDUSTRIES,
CHEMICAL SERVICES, INC.
AND AFFILIATES,
CAMCO, INCORPORATED,
CAMERON IRON WORKS USA, INC.,
CELOTEX CORPORATION (THE),
CHAMBERS & KENNEDY,
CHAMPION INTERNATIONAL
CORPORATION,
CHAS. MARTIN INSPECTION
AND CONTROLS, INC.,
CHEMICAL EXCHANGE
INDUSTRIES, INC.,
CHEVRON CHEMICAL COMPANY
(for GULF OIL CHEMICALS CORP.),
CROWN CENTRAL PETROLEUM
CORPORATION,
DIXIE CHEMICAL COMPANY,
DOW CHEMICAL COMPANY (THE),
DRESSER INDUSTRIES, INC.,
E.I. du PONT de NEMOURS
& COMPANY, INC.,
EDDY REFINING COMPANY,

Jesse E. Clark, Clerk
By Deputy: *B. Reynolds*

CIVIL ACTION NO.

H-89-2544

144249



ETHYL CORPORATION,)
EXXON CORPORATION, EXXON)
CHEMICAL AMERICAS)
EXXON PRODUCTION RESEARCH)
COMPANY,)
GATX TERMINALS CORPORATION,)
GENERAL FOODS CORPORATION,)
GOODYEAR TIRE & RUBBER)
COMPANY (THE),)
W.R. GRACE & CO.,)
GULF STATES ASPHALT, INC.)
HALLIBURTON SERVICES,)
HERCULES, INCORPORATED,)
HOECHST CELANESE CORPORATION,)
HOUSTON NATURAL GAS CORP.)
(DIVISION OF HOUSTON)
PIPE LINE COMPANY,)
HUDSON ENGINEERING CORPORATION,)
HUDSON PRODUCTS CORPORATION,)
HUGHES DRILLING FLUIDS,)
HUGHES TOOL COMPANY,)
J.M. HUBER CORPORATION,)
KAISER ALUMINUM & CHEMICAL)
CORPORATION,)
KEITH, INC./MAINTENANCE)
ENGINEERING,)
KOPPERS COMPANY, INC.,)
LONE STAR GAS COMPANY,)
LUBRIZOL CORPORATION (THE),)
MERCHANTS METALS, INC.,)
MERICHEM CO.,)
MILCHEM, INCORPORATED,)
MITCHELL ENERGY CORPORATION,)
NALCO CHEMICAL COMPANY,)
NEWPARK SHIPBUILDING & REPAIR)
INC.,)
NL INDUSTRIES, INC.,)
OAKITE PRODUCTS, INC.,)
OCCIDENTAL CHEMICAL CORPORATION)
(Successor to DIAMOND)
SHAMROCK),)
OWENS-CORNING FIBERGLAS)
CORP.,)
PAKTANK CORPORATION,)
PARKER BROTHERS & CO., INC.)
(ALLIED FENCE),)
PENCE CONSTRUCTION COMPANY,)
PENNWALT CORPORATION,)
PHILLIPS PETROLEUM COMPANY,)
PLASTIC APPLICATORS, INC.,)
PLATZER SHIPYARDS,)
POANGRA,)

PPG INDUSTRIES, INC.,)
REICHOLD CHEMICALS, INC.,)
ROHM & HAAS,)
E.W. SAYBOLT & CO., INC.,)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY,)
SOUTHWEST CHEMICAL SERVICES,)
STAUFFER CHEMICAL COMPANY,)
STEWART & STEVENSON SERVICES,)
INC.,)
TENNECO COMPANIES, INCLUDING)
PETRO-TEX CHEMICAL CORPORATION)
AND TENNECO POLYMERS, INC.)
TEXACO, INC. AND)
TEXAS-NEW MEXICO PIPELINE CO.,)
TEXAS EASTERN PRODUCTS PIPELINE)
COMPANY,)
TEXASGULF INC.,)
TEXAS STEEL & WIRE CORP.,)
UNION OIL COMPANY OF CALIFORNIA,)
and)
VELSICOL CHEMICAL CORPORATION,)
Defendants.)

CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

| | | |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | CIVIL ACTION NO. |
| | : | |
| FRENCH LTD., INC., ET AL | : | |
| | : | |
| Defendants. | : | |

CONSENT DECREE

INTRODUCTION

The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint ("Complaint") in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 ("CERCLA"), for the recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from a facility known as the French Limited Site ("Site"), located approximately one mile east of the San Jacinto River near Crosby, Texas.

The Settling Defendants (as defined in Section IV) deny the allegations in the Complaint and any and all legal and equi-

table liability under any federal or state statute, regulation, ordinance, or common law for any response costs or damages arising from conditions presented by the Site.

Pursuant to CERCLA Section 122, 42 U.S.C. §9622, the United States and the Settling Defendants each stipulate and agree to the making and entry of this Consent Decree ("Decree" or "Consent Decree") prior to the taking of any testimony, based upon the pleadings herein, and without any admission of liability or fault as to any allegation or matter arising out of the pleadings of any party or otherwise.

The United States and the Settling Defendants agree that settlement of this matter and entry of this Consent Decree is made in good faith in an effort to avoid further expensive and protracted litigation, without any admission as to liability for any purpose and that this Consent Decree (including Appendices and allocation agreements) shall not be admissible in any judicial or administrative proceeding except judicial or administrative proceedings (1) to enforce this Decree, (2) between a Settling Defendant and its insurance company concerning the obligation of the insurance company to pay sums that the Settling Defendant is paying pursuant to this Decree or (3) between a Settling Defendant and any person alleged to be liable to the Settling Defendant for contribution or indemnification with respect to the Site.

Each undersigned representative of the parties to the Consent Decree certifies that he or she is fully authorized to

enter into the terms and conditions of this Decree and to execute and legally bind such party to this document.

Settling Defendants authorize their counsel to accept service of process on their behalf.

NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over this matter and the Parties. The Parties agree not to contest the jurisdiction of the Court to enter this Decree or in any subsequent action to enforce, modify or terminate it. The Complaint states a cause of action upon which, if the allegations were proved, relief can be granted. The Parties agree and the Court finds that nothing herein constitutes any admission of fact or law.

II. PARTIES

The Parties to this Decree are the United States of America on behalf of the U.S. Environmental Protection Agency and the Settling Defendants.

III. SITE HISTORY

In response to a release or threat of a release of a hazardous substance at or from the Site and pursuant to the National Contingency Plan ("NCP"), 40 C.F.R. § 300.68, and a cooperative agreement with the State of Texas, a Remedial Inves-

tigation ("RI") and Feasibility Study ("FS") for the Site was commenced in January, 1983. The Final RI Report was issued by EPA and the State of Texas in June, 1984. The Settling Defendants commenced a supplemental RI in April, 1985, pursuant to Administrative Order on Consent, CERCLA-VI-03-85. The Supplemental RI Report was issued in April, 1986. Based on the information developed during the RI and Supplemental RI, feasibility studies were commenced. A Final FS Report prepared by EPA and the State of Texas was issued for public comment in March, 1987.

In April, 1987, the Settling Defendants submitted to EPA a proposal to evaluate further the bioremediation remedy identified in the FS Report and requested EPA to delay remedy selection pending completion of a demonstration project. Later that month, pursuant to Administrative Order on Consent, CERCLA-VI-06-87, the Settling Defendants began a pilot scale in situ biodegradation ("bioremediation") demonstration project at the Site. On May 21, 1987, a public meeting was held to discuss and receive comments on the remedies identified in the Final FS Report. The Settling Defendants issued their Final Report on the demonstration project in October, 1987.

On January 21, 1988, EPA, pursuant to CERCLA Section 117, 42 U.S.C. § 9617, announced (1) that it had evaluated the Settling Defendants' pilot study, (2) that bioremediation was the proposed remedial plan for the Site, (3) eight locations where the RI/FS and other documents concerning the Site could be reviewed, (4) that public comments on the proposed plan would be

received between January 25, 1988 and February 23, 1988, and (5) that a public meeting on the proposed plan would be held in Crosby, Texas, on February 11, 1988. This announcement was published in the local newspaper in Crosby, Texas, and both daily Houston, Texas, newspapers.

On February 11, 1988, a public meeting on the proposed remedial action plan was held in Crosby, Texas. Representatives from EPA, the State of Texas, the Settling Defendants and approximately 150 residents attended the meeting. Comments from the public were received and a transcript of the meeting was prepared, which, pursuant to CERCLA Section 117, 42 U.S.C. § 9617, has been made available to the public as part of the administrative record. Certain persons submitted written comments on EPA's proposed plan for remedial action to which EPA prepared a responsiveness summary, all of which have been included in the administrative record.

Considering the proposed plan for remedial action and the public comments received, EPA reached a decision on the final plan for remedial action, which is embodied in a Record of Decision ("ROD") signed by the Regional Administrator of EPA on March 24, 1988, and which includes a discussion of EPA's reasons for the final plan and any significant changes from the proposed remedial action plan contained in the FS.

IV. DEFINITIONS

"Appendix A" is the Record of Decision.

"Appendix B" is the list of De Minimis Settling Defendants

as identified in Section XVIII, herein.

"Appendix C" is the Trust Agreement establishing the French Limited Site Trust Fund.

"Appendix D" is the legal description of the property defined as the French Limited Site.

"Appendix E" is the list of Settling Defendants who are signatories to this Decree.

"Appendix F" is the Administrative Record as set forth in the ROD and a description of documents exchanged between the Parties prior to the date the ROD was issued.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).

"Contractor" means the company or companies retained on behalf of the Settling Defendants to undertake and complete the Remedial Action.

"Costs" means all oversight, administrative and remedial expenses incurred or to be incurred by the United States relative to the French Site.

"De Minimis Settling Defendants" are those Settling Defendants listed in Appendix B.

"Demobilization" means the phase of the Remedial Action in which equipment used for Site Remediation is dismantled and removed from the Site.

"EPA" means the United States Environmental Protection Agency.

"French Limited Site" or the "Site" is the 22.481 acre tract including an unlined pit of approximately 8 acres in size located immediately east of the intersection of, and bounded on two sides by, U.S. Highway 90 and Gulf Pump Road near Crosby, Texas more specifically described by metes and bounds in Appendix D.

"Oversight" means the United States' inspection of remedial work and verification of adequacy of performance of activities and reports of the Settling Defendants as required under the terms of this Consent Decree and which shall not be inconsistent with the National Contingency Plan.

"Owner/Operator" means French Ltd., Inc., French Ltd. of

Houston, Inc., Luther P. Hendon, individual and George A. Whitten, individual.

"Parties" means the United States and the Settling Defendants.

"Physical Construction" means the phase of the Remedial Action in which necessary site facilities and support services are provided; aeration, mixing and chemical addition systems are installed to bioremediate sludge and contaminated soils; any necessary water treatment plant expansion is completed; and a lagoon dewatering system is installed.

"Post Closure" means the phase of the Remedial Action in which groundwater monitoring, surficial maintenance and any necessary groundwater recovery are undertaken to ensure that the remedy continues to perform as designed.

"Project Coordinator" means, as to EPA, the individual designated to oversee implementation of the Decree and to coordinate communications with the Settling Defendants; and as to Settling Defendants, the individual authorized to act on their behalf to ensure performance of the Remedial Action in compliance with this Decree.

"RAS, CLP" means Routine Analytical Sampling, Contract Laboratory Procedures.

"Record of Decision" or "ROD" means the document signed by the EPA Region VI Regional Administrator on March 24, 1988, which describes the Remedial Action to be conducted at the Site and is attached as Appendix A.

"Remedial Action" means the implementation, in accordance with this Decree, of the remedy selected by EPA for the Site.

"Remedial Action Plan" or "RAP" is the plan described in Section VII E consisting of the Design Work Plan, the Physical Construction Work Plan, the Site Remediation Work Plan, the Preliminary Post Closure Activity Plan, the QA/QC Plan and the Spill/Volatile Organics Release Contingency Plan.

"Remedial Design" means the phase of the Remedial Action in which engineering plans and technical specifications are developed for implementation of the Remedial Action.

"SAS, CLP" means Special Analytical Sampling, Contract Laboratory Procedures.

"Settling Defendants" are those Defendants listed in Appendix E who are signatories to this Decree.

"Site Remediation" means the phase of the Remedial Action in which the remedy is undertaken through bioremediation of sludge and contaminated soil, stabilization of residue, if necessary, and treatment, if necessary, of groundwater and lagoon water prior to discharge to the San Jacinto River in accordance with the Remedial Design documents and the ROD.

"Site Representative" means, as to EPA, those persons confirmed by the EPA Project Coordinator as authorized to conduct oversight activities pursuant to this Decree; and as to Settling Defendants, those contractors and subcontractors hired in connection with the Remedial Action.

V. BINDING EFFECT

A. This Consent Decree applies to and is binding upon the Parties, their successors, and assigns. The Settling Defendants shall provide a copy of this Decree, as entered, and shall provide all relevant appendices to the Decree, as appropriate, to each person, including all contractors and subcontractors, retained to perform the Remedial Action contemplated by this Decree, and shall condition any contract for performance of all or any part of the Remedial Action on compliance with this Consent Decree.

B. The Settling Defendants shall implement the Remedial Action as that term is defined in this Consent Decree.

C. In the event of the inability to pay or insolvency of any one or more of the Settling Defendants, regardless of whether or not that Settling Defendant or Settling Defendants commences or becomes subject to formal bankruptcy proceedings, or if for any reason one or more of the Settling Defendants do not participate in the implementation of the Remedial Action, the

remaining Settling Defendants shall complete the Remedial Action and activities provided for in this Consent Decree.

VI. OBLIGATIONS FOR THE REMEDIAL ACTION

A. The Settling Defendants shall undertake the Remedial Action described in the ROD in accordance with the National Contingency Plan, 40 C.F.R. Part 300, and with the standards, specifications, and schedule of completion set forth in or approved by EPA pursuant to Section VII, herein. The Court finds and the Parties agree that the ROD, as set forth in Appendix A, and the Remedial Action Plan, as set forth in this Decree, are consistent with the National Contingency Plan and that upon issuance of the Certification of Completion under Section VII G(17), performance of the Remedial Action will be consistent with the National Contingency Plan.

B. In the event EPA determines that the Settling Defendants have failed to undertake the Remedial Action in a timely manner, the United States may perform such portions of the Remedial Action as it deems necessary. At least 45 days prior to initiating such performance, the United States shall notify the Settling Defendants' Project Coordinator of its intent to do so and the basis of its determination. If the Settling Defendants disagree with the United States' determination, they may, within 15 days of receipt of the notice and basis, invoke the Special Dispute Resolution provisions in Section XXII D of this Decree. In the event the United States issues the notice and basis set

forth in this Section, stipulated penalties arising from the acts or omissions that prompt the United States' performance of Remedial Action shall continue to accrue for a maximum of 30 days from the date of receipt of such notice. In consideration for the cessation of stipulated penalty accrual, the Settling Defendants shall pay an additional penalty of \$150,000 if the United States performs a portion or all of the Remedial Action. If the United States performs portions of the Remedial Action because of the Settling Defendants' failure to comply with their obligations under this Decree, the Settling Defendants shall reimburse the United States for the costs of doing such work in accordance with Section XVI.

C. All activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable state and federal laws, regulations, and all "applicable" or "relevant and appropriate" requirements. The United States has determined that the obligations and procedures authorized under this Consent Decree are consistent with its authority under applicable law.

D. Pursuant to CERCLA and the National Contingency Plan, no permits are necessary for the onsite work conducted pursuant to the ROD.

VII. WORK TO BE PERFORMED

A. Pursuant to Section VI, the Settling Defendants

shall conduct the Remedial Action or shall select a contractor or contractors to conduct the Remedial Action. The Settling Defendants shall notify EPA of the identity and general scope of work of the contractors retained to conduct the Remedial Action. When possible, EPA shall be notified prior to commencement of work by such contractors.

B. The Remedial Action shall be undertaken in the following Phases:

- (1) Remedial Action Plan Development,
- (2) Remedial Design,
- (3) Physical Construction,
- (4) Site Remediation,
- (5) Demobilization, and
- (6) Post Closure Activity.

C. The Settling Defendants or their contractors shall perform all work in accordance with the schedule specified below as that schedule may be modified from time to time by agreement of the Parties or by order of the Court. (In accordance with Section XXIII, except where noted otherwise, all time periods referred to in this Decree or attachments hereto are calendar days. Deadlines falling on a weekend or a federal holiday shall be extended until the next business day).

D. The Remedial Action Plan and the Post Closure Activity Plan shall, upon approval by EPA, be incorporated into this Decree.

E. Remedial Action Plan Development

(1) Not later than 30 days after the effective date of this Decree, the Settling Defendants shall submit to EPA and the Texas Water Commission a draft Remedial Action Plan ("RAP"). The RAP shall consist of a Design Work Plan, a Physical Construction Work Plan, a Site Remediation Work Plan, a Preliminary Post Closure Activity Plan, a Remediation Quality Assurance/Quality Control Plan ("QA/QC Plan"), and a Spill/Volatile Organics Release Contingency Plan. The RAP shall also include a detailed schedule for the Remedial Design Phase which demonstrates that the Remedial Action can be completed in a timeframe similar to on-Site incineration of sludges and contaminated soils.

(a) The Site Remediation Work Plan shall require air quality and groundwater sampling and monthly reporting of the results in accordance with Section VIII.

(b) The QA/QC Plan shall, where applicable, be prepared in accordance with current EPA guidance, Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans, QAMS-005/80. The QA/QC Plan shall include a description of the mechanism used to verify that the biodegradation process is operating within the limits specified in the ROD, the RAP and the Health and Safety Plan and a schedule for submission of QA/QC reports. The Settling Defendants and their Site Representatives shall comply with the approved QA/QC Plan. Sample collection and analysis shall be in accord-

ance with standard EPA chain of custody procedures, as documented in National Enforcement Investigations Center Policies and Procedures Manual as revised in November 1984 and the National Enforcement Investigations Center Manual for the Evidence Audit published in September 1981. The Project Coordinators may revise by written agreement the chain of custody procedures and the sample collection and analysis procedures to reflect current EPA guidance and shall notify the Parties in the event of such revision. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Decree, the Settling Defendants shall:

(i) Ensure that all contracts with laboratories utilized by the Settling Defendants for analysis of samples taken pursuant to this Decree provide for access of EPA personnel and EPA authorized representatives to assure the accuracy of laboratory results related to the Site.

(ii) Ensure that laboratories utilized by the Settling Defendants for analysis of samples taken pursuant to this Decree perform all analyses according to EPA methods or alternate methods satisfactory to EPA. Accepted EPA methods are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab

Program Statement of Work for Organic Analysis"
dated July 1985.

(iii) Ensure that all laboratories utilized by the Settling Defendants for analysis of samples taken pursuant to this Decree participate in an EPA or EPA equivalent QA/QC program. As part of the QA/QC program and upon request by EPA, such laboratories shall perform, at no expense to EPA, analyses of samples provided by EPA to demonstrate the quality of each laboratory's data. Each year EPA may provide to each laboratory a maximum of four samples per medium per analytical method (e.g., four aqueous samples for analysis by gas chromatography/mass spectrometry).

(c) The Spill/Volatile Organics Release Contingency Plan shall address both workers at the Site and public exposure to releases or spills at and from the Site.

(2) Within 90 days of receipt of the draft RAP, EPA shall provide comments to the Settling Defendants.

(3) Within 60 days of receipt of EPA's comments, the Settling Defendants shall submit a final RAP which satisfactorily addresses each comment.

(4) Within 30 days of receipt of the final RAP, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(5) Within 15 days of receipt of any disapproval under paragraph (4) above, the Settling Defendants shall resubmit the final RAP which satisfactorily addresses each comment.

(6) Within 15 days of receipt of any resubmittal under paragraph (5) above, EPA shall notify the Settling Defendants of its approval/disapproval.

F. Remedial Design

(1) Not later than 10 days after receipt of EPA's approval of the RAP, the Settling Defendants shall initiate the Remedial Design Phase in accordance with the schedule included in the RAP.

(2) The draft Remedial Design, including plans, specifications and schedules for the Physical Construction and Site Remediation Phases and other pertinent information, shall be submitted to EPA and the Texas Water Commission in accordance with the schedule in the approved RAP.

(3) Within 90 days of receipt of the draft Remedial Design, EPA shall provide comments to the Settling Defendants.

(4) Within 90 days of receipt of EPA's comments, the Settling Defendants shall submit a final Remedial Design which satisfactorily addresses each comment. Preparation of the final Remedial Design may require additional field work not contemplated by either Party upon entry of this Consent Decree. If the Project Coordinators agree that such additional field work is required, EPA and the Settling Defendants shall meet to discuss whether additional time is necessary.

(5) Within 60 days of receipt of the final Remedial Design, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(6) Within 15 days of receipt of any disapproval under paragraph (5) above, the Settling Defendants shall resubmit the final Remedial Design which satisfactorily addresses each comment.

(7) Within 15 days of receipt of any resubmittal under paragraph (6) above, EPA shall notify the Settling Defendants of its approval/disapproval.

G. Physical Construction, Site Remediation and Demobilization

(1) Not later than 21 days after receipt of EPA's approval of the final Remedial Design, the Settling Defendants shall initiate the Physical Construction and Site Remediation Phases in accordance with the schedules included in the approved Remedial Design.

(2) The Settling Defendants shall notify EPA upon completion of the following tasks: excavation of the sloughs, bioremediation of the sludges and soils, groundwater treatment and stabilization of residues.

(3) Within 21 days of receipt of the notice of completion of each task as required in paragraph (2) above, the EPA Project Coordinator shall verify the completion of that task.

(4) At least 90 days prior to anticipated completion of the Site Remediation Phase, the Settling Defendants shall sub-

mit to EPA and the Texas Water Commission a draft Demobilization Plan which shall include a schedule for the Demobilization Phase and a detailed schedule addressing those tasks which must be performed before the Site Remediation Phase is complete.

(5) Within 60 days of receipt of the draft Demobilization Plan, EPA shall provide comments to the Settling Defendants.

(6) Within 30 days of receipt of EPA's comments, the Settling Defendants shall submit a final Demobilization Plan which satisfactorily addresses each comment.

(7) Within 15 days of receipt of the final Demobilization Plan, EPA shall notify the Settling Defendants of its approval/disapproval with comments.

(8) Within 15 days of receipt of any disapproval under paragraph (7) above, the Settling Defendants shall resubmit the final Demobilization Plan which satisfactorily addresses each comment.

(9) Within 15 days of receipt of any resubmittal under paragraph (8) above, EPA shall notify the Settling Defendants of its approval/disapproval.

(10) The Settling Defendants shall notify EPA upon completion of Demobilization.

(11) Within 120 days after completion of Demobilization, the Settling Defendants shall submit to EPA and the Texas Water Commission a draft Site Remediation Report, containing (a) all data collected during the Site Remediation Phase and documentation of compliance with the terms of the QA/QC Plan and (b) a

certification from a professional engineer that work has been completed in compliance with the terms of the Remedial Design and that all remedial equipment has been dismantled and removed from the Site.

(12) Within 180 days of receipt of the draft Remediation Report, EPA shall provide comments to the Settling Defendants.

(13) Within 90 days of receipt of EPA's comments, the Settling Defendants shall submit a final Remediation Report which satisfactorily addresses each comment.

(14) Within 60 days of receipt of the final Remediation Report, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(15) Within 30 days of receipt of any disapproval under paragraph (14) above, the Settling Defendants shall resubmit the final Remediation Report which satisfactorily addresses each comment.

(16) Within 30 days of receipt of any resubmittal under paragraph (15) above, EPA shall notify the Settling Defendants of its approval/disapproval. Such approval shall not be unreasonably withheld.

(17) Within 180 days after approval of the final Remediation Report, EPA shall issue a Certification of Completion.

H. Post Closure Activity

(1) At least 90 days prior to anticipated completion of the Site Remediation Phase, the Settling Defendants shall submit to EPA and the Texas Water Commission a draft Post Closure

Activity Plan. Such Plan shall specify the activities necessary after completion of the Site Remediation Phase to ensure that the remedy continues to perform as designed.

(2) Within 60 days of receipt of the Post Closure Activity Plan, EPA shall provide comments to the Settling Defendants.

(3) Within 30 days of receipt of EPA's comments, the Settling Defendants shall submit a final Post Closure Activity Plan which satisfactorily addresses each comment.

(4) Within 15 days of receipt of the final Post Closure Activity Plan, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(5) Within 15 days of receipt of any disapproval under paragraph (4) above, the Settling Defendants shall resubmit the Post Closure Activity Plan which satisfactorily addresses each comment.

(6) Within 15 days of receipt of any resubmittal under paragraph (5) above, EPA shall notify the Settling Defendants of its approval/disapproval.

(7) The Settling Defendants shall initiate the Post Closure Activity Phase in accordance with the schedule included in the approved Post Closure Activity Plan.

I. Failure of Remedy

If the Remedial Action taken by the Settling Defendants fails to achieve the remedial objectives set forth in the ROD:

(1) Not later than 45 days after confirmation of such failure, the Settling Defendants shall submit to EPA for approval a work plan, containing a schedule, for completion of a Failure Evaluation Report as more fully described in paragraph (5) below.

(2) With 45 days of receipt of the work plan, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(3) Within 30 days of receipt of EPA's comments, the Settling Defendants shall resubmit the work plan which satisfactorily addresses each comment.

(4) Within 15 days of receipt of any resubmittal under paragraph (4) above, EPA shall notify the Settling Defendants of its approval/disapproval.

(5) The Settling Defendants shall execute the approved work plan and submit a Failure Evaluation Report which shall consist of a discussion of the data related to the failure, conclusions concerning all data obtained during the evaluation, the cause of the failure, if known, and, if appropriate, a recommendation for additional study regarding the failure.

(6) Within 60 days of receipt of the Failure Evaluation Report, EPA shall notify Settling Defendants of its approval/disapproval with comments.

(7) Within 30 days of receipt of EPA's comments, the Settling Defendants shall resubmit the Failure Evaluation Report which satisfactorily addresses each comment.

(8) Within 15 days of receipt of any resubmittal under paragraph (7) above, EPA shall notify Settling Defendants of its approval/disapproval.

(9) Not later than 180 days after a determination by EPA that failure to achieve the Remedial Objectives set forth in the ROD was caused by a problem with the Remedial Action, the Settling Defendants shall submit to EPA for approval a written report evaluating alternatives and may submit a proposal for such additional response actions as may be necessary to achieve appropriate objectives.

(10) Within 90 days of receipt of the report described in paragraph (9) above, EPA shall notify the Settling Defendants of its approval/disapproval with comments.

(11) Within 60 days of receipt of EPA's comments, the Settling Defendants shall resubmit the report which satisfactorily addresses each comment.

(12) Within 30 days of receipt of any resubmittal under paragraph (11) above, EPA shall notify the Settling Defendants of its approval/disapproval.

(13) Before selecting any further Remedial Action, EPA shall comply with the public participation provisions of CERCLA Section 117, 42 U.S.C. §9617.

(14) EPA shall notify Settling Defendants of its selection of further Remedial Action.

(15) Within 90 days of receipt of notice under paragraph (14) above, the Settling Defendants shall submit to EPA and

the Texas Water Commission a schedule for implementation of the further Remedial Action.

VIII. MONTHLY PROGRESS REPORTS

A. Commencing on the 10th day of the month following the month when this Consent Decree becomes effective, the Settling Defendants shall submit written progress reports to EPA. These progress reports shall describe the actions taken pursuant to this Decree, including a general description of activities and progress during the reporting period, activities projected to be commenced or completed during the next reporting period, and any problems that have been encountered or are anticipated by the Settling Defendants in commencing or completing the Remedial Action. Progress reports shall include all data received during the reporting period and the status of credits accrued or applied under Section XX A(5) and C(2) (Stipulated Penalties).

B. If a progress report submitted by the Settling Defendants is deficient, EPA shall notify the Settling Defendants within 8 work days of receipt of such progress report by EPA. The notice shall include a description of the deficiencies.

C. Within 10 days of receipt by the Settling Defendants of a notice of deficiency of a progress report, the Settling Defendants shall make the necessary changes and resubmit the progress report to EPA.

D. Monthly progress reports shall no longer be required after EPA issues the Certification of Completion under Section VII G(17).

IX. PROJECT COORDINATORS

A. Not later than the effective date of this Decree, EPA and the Settling Defendants shall each designate a Project Coordinator to oversee implementation of the Decree and to coordinate communication between EPA and the Settling Defendants. ~~Absence of either Project Coordinator from the Site shall not be~~ cause for stoppage of work.

B. (1) The EPA Project Coordinator shall have the authority vested in Remedial Project Manager and the On-Scene Coordinator by 40 C.F.R. Part 300 (1987), as well as the authority to ensure that the Remedial Action is performed in accordance with all applicable statutes, regulations and this Consent Decree. The EPA Project Coordinator has the authority to require a cessation of the performance of the Remedial Action or any other activity at the Site that, in his or her opinion, may present or contribute to an imminent and substantial endangerment to public health, welfare, or the environment because of an actual or threatened release of hazardous substances from the Site. Within 24 hours after the EPA Project Coordinator issues an oral order to halt work, EPA shall orally notify one or more of the persons listed in Section XXIV, and, if time permits, provide a brief explanation of the basis for such order. As soon as possible,

but in no event more than 14 days after the initial order to halt work, a written explanation of the basis for such order to halt work shall be provided to those persons in Section XXIV.

(2) The Settling Defendants' Project Coordinator shall be responsible for ensuring performance of the Remedial Action in compliance with this Decree.

C. In the event the EPA Project Coordinator suspends the Remedial Action or any other activity at the Site, affected deadlines under this Decree shall be extended for a period of time equal to the time of the suspension of Remedial Action or other activities plus reasonable additional time for resumption of activities. If an imminent and substantial endangerment described in paragraph B(1) above is caused by non-compliance with the RAP or the Health and Safety Plan, then any extension of the compliance deadlines shall be at EPA's discretion.

D. During the Remedial Design, Physical Construction, Site Remediation and Demobilization Phases, meetings shall be held at least monthly between the Project Coordinators regarding the progress and details of the Phase and to review and resolve any discrepancies in data as they deem appropriate under the circumstances. At least 7 days prior to each meeting, the Settling Defendants shall deliver to the EPA Project Coordinator an agenda for the meeting and any documents to be discussed.

E. Except for revisions of the QA/QC Plan pursuant to Section VII E(1)(b), the Project Coordinators do not have the authority to modify in any way the terms of this Decree.

F. EPA and the Settling Defendants may change their respective Project Coordinators. When possible, the other Party shall be notified at least 7 days prior to the change.

G. The Settling Defendants' Project Coordinator may assign other Representatives, including contractors, to serve as a Site Representative for oversight of performance of daily operations during Remedial Action.

H. The EPA Project Coordinator may assign other Representatives, including other EPA employees or contractors, to serve as a Site Representative for oversight of performance of daily operations during the Remedial Action. The EPA Project Coordinator may delegate on a temporary basis his or her responsibilities and shall notify Settling Defendants' Project Coordinator orally or in writing of such delegation.

X. HEALTH AND SAFETY PLAN

A. The Settling Defendants shall submit to EPA a Health and Safety Plan before activities on the Site required by this Decree commence.

B. The Health and Safety Plan shall satisfy the requirements of the Occupational Safety and Health Guidance for Hazardous Waste Site Activities [October 1985 (DDH 5 NIOSH) Publication No. 85-115] and EPA's Standard Operating Safety Guides.

C. The Settling Defendants shall comply with the Health and Safety Plan.

XI. SITE ACCESS

A. The Site currently is owned by the State of Texas. Neither Party shall unreasonably interfere with any right or authority of the other Party or its Site Representatives to enter and move freely about the Site at all reasonable times.

B. To the extent that rights of access to property are required for the proper and complete performance of this Decree, the Settling Defendants shall use due diligence to obtain such rights from the present owners or those persons who have control not later than 60 days after the effective date of this Decree. Rights of access shall apply to the Parties and their Site Representatives. In the event that access rights are not obtained before expiration of the 60-day period, the Settling Defendants shall notify EPA within 65 days of the effective date of this Consent Decree regarding both the lack of, and efforts to obtain, such rights. The loss of access or failure to obtain necessary rights of access (after the exercise of due diligence to obtain or to reobtain access,) shall toll affected schedules until such rights are obtained.

C. During the effective period of this Decree, EPA, and its Site Representatives, including contractors, shall at all reasonable times have access to the Site and any other property to which rights of access have been obtained for purposes of conducting any activity authorized by this Decree, including but not limited to:

- (1) Monitoring the progress of activities taking place;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations relating to contamination at or near the Site; and
- (4) Obtaining samples at the Site.

D. While on the Site or any other property to which access has been obtained, all persons shall comply with all applicable provisions of the Health and Safety Plan except that EPA personnel or representatives need only comply with EPA's internal safety and health procedures.

E. Nothing in this Decree is intended to limit or affect the access authority which either the United States or the State of Texas may have under law.

XII. TRUST FUND

A. Not later than 10 days after the effective date of this Decree the Settling Defendants shall present to EPA for approval a signed Trust Agreement in the form of Appendix C establishing the "French Site Trust Fund." The Trust Agreement shall confer upon the Trustee all powers and authority necessary to fulfill the obligations of the Trustee under this Consent Decree. The Trust Agreement shall instruct the Trustee to make expenditures from the French Site Trust Fund (1) to pay the contractor(s) for the work described in the ROD, (2) to reimburse

the United States for its oversight costs as provided in Section XVI hereof, and (3) to pay other proper expenses required to be paid by the Settling Defendants pursuant to this Consent Decree, including dispute resolution expenses and stipulated penalties. Funding of the French Site Trust Fund is not a fine, penalty, or monetary sanction.

B. The Trust Agreement shall require the Trustee, within 60 days of the date of his appointment, and quarterly and regularly thereafter, to submit to the Settling Defendants and EPA financial reports that include a balance sheet for the period just ended and a projected expense statement for all site-related obligations, including but not limited to the expenses described in paragraph A of this Section, for the upcoming quarter. If funds in the French Site Trust Fund are not sufficient to meet projected expenses for the upcoming quarter, the Settling Defendants shall deposit in the French Site Trust Fund within 30 days of receipt of the Trustee's report, sufficient funds to meet the projected expenses for such quarter. Any funds remaining in the French Site Trust Fund upon satisfaction of this Decree shall be returned to the Settling Defendants in accordance with the terms of the Trust Agreement.

C. EPA's approval of the terms of the French Site Trust Agreement, is not and shall not be construed as a guarantee of the monetary sufficiency of the French Site Trust Fund.

XIII. SUBMISSION OF DOCUMENTS, SAMPLING, AND ANALYSIS

A. Subject to the confidentiality provisions set forth in paragraph C below, any analytical or design data generated or obtained by the Settling Defendants that are related to the Site shall be provided to EPA within 20 days of receipt of any request by EPA for such data.

B. Subject to the confidentiality provisions set forth in paragraph C below, all data, factual information, and documents submitted by the Settling Defendants to EPA pursuant to this Consent Decree shall be available to the public.

C. The Settling Defendants may assert a claim of business confidentiality pursuant to 40 C.F.R. Part 2 as to any process, method, technique, or any description thereof that the Settling Defendants claim constitutes proprietary or trade secret information developed by the Settling Defendants or developed by the Contractor or the Contractor's subcontractors. The Settling Defendants shall not assert a claim of confidentiality regarding any hydrogeological or chemical data, or any data submitted in support of the RAP.

D. EPA employees and its Site Representatives may take splits or duplicates of any samples obtained by the Settling Defendants or their Site Representatives at the Site during the implementation of the Remedial Action and shall provide the analytical results to the Settling Defendants within 30 days of receipt.

E. The Settling Defendants shall notify EPA at least 7 days prior to any sampling conducted in accordance with RAS, CLP protocols and at least 30 days prior to any sampling conducted in accordance with SAS, CLP protocols. All samples shall be handled in accordance with the approved QA/QC Plan.

XIV. RECORDS

A. Each Settling Defendant shall preserve and retain one set of all records and documents now in its possession or control or in the possession or control of its accountants or contractors that relate in any manner to its potential liability under CERCLA Section 107, 42 U.S.C. §9607, with respect to the Site, regardless of any document retention policy to the contrary, for six years after EPA's issuance of the Certification of Completion under Section VII G(17) herein or upon satisfaction of this Decree, whichever occurs first.

B. Until completion of the Remedial Action and satisfaction of this Consent Decree, the Settling Defendants shall preserve, and shall instruct their contractors and subcontractors, and anyone else acting on their behalf at the Site to preserve (in the form of originals or copies, or in the alternative, microfiche of all originals), all records, documents, and information of whatever kind, nature, or description required to be generated hereunder and relating to the performance of the Remedial Action at the Site. EPA shall contact the persons designated in Section XXIV to determine the location and to obtain

copies of the documents required by this paragraph. Upon the completion of the Remedial Action, copies of all such records, documents, and information as EPA shall request shall be delivered to the EPA Project Coordinator or his or her successor.

C. Any Settling Defendant refusing to provide copies of a document based upon a claim of privilege shall identify the document and explain the basis for the claim.

XV. RESPONSE AUTHORITY

Except as provided in Sections XVII (Covenant Not to Sue), XVIII (De Minimis Settlement) and XIX (Owner/Operator Settlement), nothing in this Decree shall be deemed to limit or affect the response authority of EPA under CERCLA Sections 104 or 106, 42 U.S.C. §§ 9604 or 9606, or under any other federal response authority or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority. This Section may not be used either to amend the Remedial Action except as authorized by CERCLA or to obtain a result inconsistent with the exercise of Dispute Resolution under this Decree.

XVI. RESPONSE COST REIMBURSEMENT

A. Within 60 days of the effective date of this

Consent Decree, the Trustee shall deliver a certified or cashier's check payable to "EPA Hazardous Substances Superfund" in the amount of \$1,275,000 to the following address:

U.S. Hazardous Substances Superfund
EPA - French Limited - Region 6
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

Attention: Superfund Collection Officer

B. A copy of the check and the letter enclosing the check shall be submitted to the United States in accordance with Section XXIV, herein. Such payment by the Settling Defendants is not a penalty, fine, or monetary sanction of any kind, but is reimbursement to the United States and is in full settlement of its claims for all costs incurred by the United States relating to the Site through approximately March 31, 1988 with the exception of those costs addressed in U.S. v. French Ltd. et al. No. H-84-4000 S.D. Tex. and costs reimbursed pursuant to Administrative Consent Orders VI-06-87 and VI-01-88.

C. The United States has and will continue to incur costs at the Site after March 31, 1988, for oversight of the Remedial Action. The Settling Defendants shall fully reimburse the United States for all such costs. The United States shall send the Settling Defendants a demand for payment of such costs on an annual basis with the first demand to be made on or before July 31, 1989. Thereafter, demands will be made on or before July 31 of each succeeding year in which the United States conducts oversight work or performs a portion or all of the Remedial

Action pursuant to Section VI B. All demands for payment made by the United States pursuant to this Section shall include cost documentation that verifies that the claimed costs were incurred and that the amount of the demand was properly calculated. The Settling Defendants shall have the right to audit any and all cost documentation, including business records retained by EPA, its contractors and subcontractors. All demands for payment shall also include an estimate of the amount of oversight costs for the next year. The payment shall be due within 60 days of receipt of the demand for payment and shall be paid in accordance with the procedures set forth above. If the dispute resolution provisions are invoked, payment of monies due to the United States shall be made within 60 days of resolution of the dispute. The Parties expect that oversight costs prior to the Post Closure Activity Phase will be in the range of 10% of the costs incurred by the Settling Defendants.

D. Interest calculated in accordance with Section 107(a) of CERCLA, 42 U.S.C. §9607(a) shall be added to all payments made after the due date.

XVII. COVENANT NOT TO SUE

A. Except as expressly provided herein, the United States hereby covenants not to sue, not to take any administrative action, and not to execute judgment against Settling Defendants for any and all civil obligations or liability, including future liability, to the United States for any causes of action arising

under CERCLA Sections 106 and 107, 42 U.S.C. §§9606 and 9607 and subsequently enacted statutory provisions authorizing equivalent causes of action for claims arising from or related to releases or threatened releases of hazardous substances from the Site. With respect to future liability, this covenant not to sue shall take effect upon issuance of the Certification of Completion under Section VII G(17).

B. The Settling Defendants hereby covenant not to sue the United States, including any and all departments, agencies, officers, administrators, and representatives thereof, for any claim, counter-claim, or cross-claim asserted, or that could have been asserted until the effective date of this Consent Decree, arising out of or relating to the Site.

C. The provisions of Paragraphs A and B of this Section shall not apply to the following claims:

(1) Claims based on a failure by the Settling Defendants to fulfill the requirements of this Decree;

(2) Claims for costs incurred by the United States as a result of the failure of the Settling Defendants to fulfill the requirements of Section VII of the Decree;

(3) Claims based on criminal liability;

(4) Claims based on liability for hazardous substances removed from the Site by any Party;

(5) Claims based on liability for future monitoring or oversight expenses incurred by the United States except as those

expenses are recovered by the United States pursuant to Section XVII, herein (Response Cost Reimbursement); or

At (6) Claims for damages to natural resources as defined by CERCLA.

D. Notwithstanding any other provisions of this Consent Decree, the United States reserves the right to seek modification of this Decree or to institute a new action to seek additional removal or remedial measures at the Site through an action to compel the Settling Defendants to perform removal or remedial work or to institute an action to compel the Settling Defendants to reimburse the United States or the State for response costs if:

(1) for proceedings prior to EPA certification of completion of the Remedial Action,

(a) conditions at the Site (including the release or threat of release of hazardous substances), previously unknown to the United States are discovered after the entry of this Consent Decree; or

(b) information is received, in whole or in part, after the date of the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment;

(2) for proceedings subsequent to EPA certification of completion of the remedial action,

(a) conditions at the Site previously unknown to the United States are discovered after the certification of completion by EPA, or

(b) information is received, in whole or in part, after the certification of completion by EPA, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

(3) for the purposes of this Section, those matters contained in or referred to in Appendix F shall be deemed to be conditions or information known to the United States.

E. After EPA certifies completion of the Remedial Action, the Settling Defendants may request EPA to certify that the Remedial Action constitutes a remedy subject to the Special Covenants Not to Sue provisions of CERCLA Section 122(f)(2)(B), 42 U.S.C. § 9622(f)(2)(B). EPA's decision with respect to the requested certification shall be reviewable, if at all, according to any procedures and standards applicable under CERCLA and other federal law.

F. The parties to this Consent Decree agree that the Settling Defendants are entitled to the contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2), regarding matters addressed in this Decree or in Administrative Orders on Consent No. CERCLA-VI-3-85, CERCLA-VI-03-87, CERCLA-VI-06-87 and CERCLA-VI-01-88. The parties to this Consent Decree agree that the United States shall be under no obligation to assist the Settling Defendants in any way in defending con-

tribution actions brought by persons or entities not parties to this Decree.

XVIII. DE MINIMIS SETTLEMENT

A. Each De Minimis Settling Defendant certifies to the best of its knowledge that (1) it has provided to EPA all information in its possession or in the possession of its agents, successors or assigns which relates in any way to the generation, treatment, transportation, storage or disposal of hazardous substances at or in connection with the Site, (2) the amount of material, if any, it contributed to the Site is less than 350,000 gallons, and (3) that the toxic or hazardous effects of any such material are minimal in comparison to the other materials at the Site.

B. Except as otherwise provided in this Section, the United States and the Settling Defendants hereby covenant not to sue the De Minimis Settling Defendants concerning any liability under CERCLA, including future liability, resulting from any release or threatened release of hazardous substances addressed by the Remedial Action. This covenant not to sue shall not apply to:

- (1) claims for damages to natural resources, and
- (2) claims based on criminal liability.

C. The covenant not to sue contained in this Section is given in consideration of a payment by each De Minimis Settling Defendant of the amount shown in Appendix C. The

Settling Defendants agree that each such payment represents an amount equal to or greater than the fair share of the respective De Minimis Settling Defendant for all matters covered by the covenant not to sue herein, and no such payment is a fine, penalty or monetary sanction of any kind.

D. The covenant not to sue granted in this Section shall be effective as to any De Minimis Settling Defendant upon payment by such Party to the Trustee of the amount set forth in Appendix C.

E. In the event it is ever shown by probative evidence that more than 350,000 gallons of material was contributed by any De Minimis Settling Defendant to the Site or that the toxic or hazardous effects of any such materials are not minimal in comparison to the other materials at the Site, the covenant not to sue in Paragraph B shall be null and void as to such Party.

F. The covenant not to sue in Paragraph B shall become null and void as to the De Minimis Settling Defendants listed in Appendix B(2) to the extent costs incurred by all Settling Defendants in connection with this Decree exceed \$100 million.

XIX. Owner/Operator/Transporter Settlement

A. Except as otherwise provided in this Section, the

United States and the Settling Defendants hereby covenant not to sue the Owner/Operator/Transporter or entities making the cash payment on their behalf under paragraph B concerning any liability under CERCLA, including future liability, resulting from any release or threatened release of hazardous substances addressed by the Remedial Action. This covenant not to sue shall not apply to:

- (1) claims for damages to natural resources, and
- (2) claims based on criminal liability.

B. The covenant not to sue contained in this Section is given in consideration of the Owner/Operator/Transporter's agreement as set forth in this paragraph. The Owner/Operator/Transporter shall cause to be delivered to the Trustee for deposit in the French Ltd. Site Designated Settlement Trust Fund within 30 days of the effective date of this Decree cash in an amount of \$3,476,514.40 and shall deliver to the Settling Defendants an assignment of all rights to recover up to \$14 million from the insurance proceeds available or potentially available under the following policies:

| <u>Insurer</u> | <u>Policy No.</u> | <u>Coverage Period</u> |
|----------------------------|-------------------|------------------------|
| Mission Insurance Co. | M 73467 | 12/20/71-12/20/74 |
| Unknown | | 12/74-12/75 (approx) |
| Mission Insurance Co. | M 831625 | 12/20/75-12/20/76 |
| Interstate Fire & Casualty | 155-U027187 | 1/12/77-1/12/78 |
| National Fire and Marine | 2 CBX 1440 | 3/9/78-12/20/78 |
| Surplus Underwriters | | |
| Casualty Ins. Co. | GLA 001171 | 12/20/77-12/20/78 |
| Alliance Insurance Co. | CO 1907 | 12/20/77-12/20/78 |

C. Performance of the agreement in paragraph B shall discharge the Owner/Operator/Transporter's obligation with respect to the Remedial Action under this Decree including, but not limited to, the payment of Remedial Action costs and Response Cost Reimbursement. Payment of these funds by or on behalf of the Owner/Operator/Transporter or on their behalf is not an admission of liability on the part of the Owner/Operator/Transporter nor is it the assumption of any coverage, trigger of coverage or occurrence position by either the Owner/Operator/Transporter or by anyone who has provided funds on their behalf.

D. The covenant in paragraph A shall be effective upon payment of the amount set forth in paragraph B and delivery of the assignment.

E. Once the covenant in paragraph A is effective, the Settling Defendants expressly agree that they shall not attempt to enforce the agreement in paragraph B by proceeding against the personal assets of the Owner/Operator/Transporter.

F. It is expressly understood and agreed by the Settling Defendants that, except as set forth in this Section, any rights of contribution or indemnification they may have against Joe French individually, the Estate of James Ellison, or any successor owner of French Ltd., Inc. or French Ltd. of Houston, Inc. with respect to the Site shall remain the rights of the Owner/Operator/Transporter and shall not be pursued by any of the Settling Defendants.

XX. STIPULATED PENALTIES

Subject to Sections XXI (Force Majeure) and XXII (Dispute Resolution), noncompliance with this Decree shall result in stipulated penalties as set forth below.

A. Penalties Related to Timeliness of Submittals

(1) For failure to (a) meet the deadlines set forth in Section VII F(2), G(4), G(6), G(11), H(1) I(1), I(3), I(5), I(7), I(9), I(11) or I(15); (b) submit timely quarterly reports on the Trust as required by Section XII; (c) submit data in a timely fashion under Section XIII A or (d) provide timely notice of sampling under Section XIII E, the Settling Defendants shall pay stipulated penalties in the following amounts for each day during which the delay continues:

| <u>Period of Delay</u> | <u>Amount/Day</u> |
|------------------------|-------------------|
| 1st through 14th day | \$ 500 |
| 15th through 45th day | 2,000 |
| 46th day and beyond | 3,000 |

(2) For failure to meet the deadlines set forth in Section VII E(1), E(3), E(5), F(4), F(6), G(8), G(13), G(15), H(3) or H(5), the Settling Defendants shall pay stipulated penalties in the following amounts for each day during which the delay continues:

| <u>Period of Delay</u> | <u>Amount/Day</u> |
|------------------------|-------------------|
| 1st through 14th day | \$1,000 |
| 15th through 45th day | 4,000 |
| 46th day and beyond | 8,000 |

(3) For failure to submit a monthly report in a timely fashion as required by Section VIII A, the Settling Defendants shall pay stipulated penalties of up to \$2,000 as follows:

| <u>Period of Delay</u> | <u>Amount/Day</u> |
|------------------------|-------------------|
| 1st through 4th day | \$125/day |
| 5th day | 1,500 |

(4) For failure to submit QA/QC reports in a timely fashion as required by the QA/QC Plan described in Section VII E(1)(b), the Settling Defendants shall pay stipulated penalties of up to \$2,000 as follows:

| <u>Period of Delay</u> | <u>Amount/Day</u> |
|------------------------|-------------------|
| 1st through 4th day | \$125/day |
| 5th day | 1,500 |

(5) By submitting required documents and reports in advance of any deadline applicable under this Decree, the Settling Defendants shall obtain credits against deadlines for submitting subsequently due documents in the same group. A maximum of 10 days may be accrued for credit in each group, and a maximum of 10 days may be applied against any one deadline.

The groups are as follows:

- (a) Documents required under Section VII F(2), G(4), G(6), G(11), H(1), I(1), I(5), I(7), I(9), I(11) and I(15);
- (b) Quarterly reports on the Trust under Section XII;
- (c) Data submittals under Section XIII A;
- (d) Documents required by Section VII E(1), E(3), E(5), F(4), F(6), G(8), G(13), G(15), H(3) and H(5); and
- (e) Monthly reports under Section VIII A and QA/QC reports described in Section VIII E(1)(b).

B. Penalties Related to Adequacy of Submittals

(1) For grossly inadequate submittals under Section VII E(1), E(3), F(2), F(4), G(4), G(6), G(11), G(13), H(1) or H(3), the Settling Defendants shall pay stipulated penalties of \$10,000.

(2) For inadequate resubmittals under Section VII E(5), F(6), G(8), G(15) or H(5), the Settling Defendants shall pay stipulated penalties of \$18,000.

(3) For inadequate resubmittals of monthly reports as required by Section VIII C, the Settling Defendants shall pay stipulated penalties of \$2,000.

C. Penalties Related to Project Milestones

(1) For failure to (a) complete Physical Construction in accordance with the schedule approved under Section VII F, (b) initiate Site Remediation in accordance with the schedule approved under Section VII F, (c) complete demobilization in accordance with the Demobilization Plan approved under Section VII G, or (d) initiate Post Closure Activities in accordance with the schedule approved under Section VII H, the Settling Defendants shall pay stipulated penalties in the following amounts for each day during which the delay continues:

| <u>Period of Day</u> | <u>Amount/Day</u> |
|-----------------------|-------------------|
| 1st through 30th day | \$1,500 |
| 31st through 60th day | 4,000 |
| 61st day and beyond | 20,000 |

(2) By achieving the project milestones identified in subparagraph (1) in advance of applicable deadlines, the Settling Defendants shall obtain credits against subsequent milestones. A

maximum of 20 days may be accrued for credit at any one time, and a maximum of 10 days may be applied against any one deadline.

D. For disobeying an order to halt work under Section IX B, the Settling Defendants shall pay stipulated penalties of \$25,000 per day.

E. (1) For failure to use due diligence to obtain site access in accordance with Section XI B, the Settling Defendants shall pay a stipulated penalty of \$12,500.

(2) For failure to notify EPA of the lack of site access in accordance with Section XI B the Settling Defendants shall pay a stipulated penalty of \$25,000.

(3) For denying access provided for in Section XI C, the Settling Defendants shall pay stipulated penalties of \$25,000 per day.

F. (1) For failure to maintain records related to § 107 liability in accordance with Section XIV A, any offending De Minimis Settling Defendant shall pay a stipulated penalty of \$25,000 and any other offending Settling Defendant shall pay a stipulated penalty of \$100,000.

(2) For failure to maintain or deliver documents related to performance of the Remedial Action in accordance with Section XIV B, the Settling Defendants shall pay a stipulated penalty of \$25,000.

G. With the exception of individual violations referred to in paragraph F(1) above, all penalties referred to

herein represent collective, not individual obligations of the Settling Defendants.

H. Stipulated penalties under this Section shall be submitted within 60 days after receipt of a demand letter that stipulated penalties have accrued and have not been waived, or of final dispute resolution pursuant to Section XXII, including judicial review, whichever comes later. Penalties shall accrue from the date of noncompliance.

I. Stipulated penalties shall be paid by submitting a certified or cashier's check payable to "EPA Hazardous Substances Superfund" to:

U.S. Hazardous Substances Superfund
EPA - French Limited - Region 6
P.O. Box 371003M
Pittsburgh, PA 15251

Attention: Superfund Collection Officer

A copy of the check and the letter forwarding the check, including a brief description of the alleged noncompliance, shall be submitted to the United States in accordance with Section XXIV.

J. In addition to the stipulated penalties set forth above, the United States specifically reserves the right to seek other remedies or sanctions available to the United States by reasons of Settling Defendants' failure to comply with the requirements of this Decree, including sanctions and penalties that the United States may seek under Section 122(1) of CERCLA, 42 U.S.C. §9622(1). However, the United States may not utilize such other remedies or sanctions to obtain a result inconsistent with

the exercise or result of Dispute Resolution under this Decree. Provided, however, that the stipulated penalties paid hereunder for a particular violation shall be credited against any monetary sanctions or penalties which Settling Defendant may be required to pay in the event the United States seeks additional relief against them for the same violation.

K. A single act or omission shall not be the basis for more than one type of stipulated penalty, however a single act or omission may result in more than one (1) day of stipulated penalties.

L. Subject to Section XXII (Dispute Resolution) EPA has the sole discretion, not reviewable by the Court, to reduce or waive stipulated penalties.

M. Settling Defendants shall pay stipulated penalties in accordance with this Section unless the Court finds they were substantially justified in invoking and continuing to pursue Dispute Resolution, in which case the Court may reduce the stipulated penalties as appropriate, but in no event shall the reduction be more than 50 percent.

XXI. FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as circumstances beyond the reasonable control of the Settling Defendants which they cannot overcome by the exercise of due diligence. "Force Majeure" shall not include increased costs or expenses of any of the work to be performed under this Decree,

nor the financial inability of any of the Settling Defendants to perform such work, nor the failure of any Settling Defendants to make payments to the Trust.

B. Settling Defendants shall orally notify EPA's Project Coordinator promptly following Settling Defendants' discovery that a "Force Majeure" event has occurred or is likely to occur. In addition, Settling Defendants shall notify EPA in writing as soon as possible, but not later than 10 days after Settling Defendants discovered or should have discovered that a "Force Majeure" event has occurred or is likely to occur. Such notice shall describe in detail the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by Settling Defendants, their contractors, or consultants, to prevent or minimize the delay, and the timetable by which these measures have been, are being, and will be implemented. Failure to notify EPA within the 10 day period in writing in accordance with this section shall constitute a waiver of such claim of "Force Majeure."

C. If the Parties agree that a delay is or was attributable to a "Force Majeure" event, the Parties shall agree to modify affected schedules to provide such additional time as may be necessary for completion of the specific Phase of the Remedial Action and, if necessary, any succeeding phase of the Remedial Action affected by such delay.

D. If the United States and the Settling Defendants cannot agree that the reason for the delay was a "Force Majeure"

event or cannot agree upon the amount of additional time necessary for completion of the affected Phases, then the dispute shall be resolved by reference to Section XXII (Dispute Resolution) of this Consent Decree, and the Settling Defendants shall have the burden of demonstrating that the event was a "Force Majeure" event, that the delay was caused by the "Force Majeure" event, and that the duration of the delay is or was warranted under the circumstances.

XXII. DISPUTE RESOLUTION

A. If the Parties cannot resolve any dispute arising under this Decree, the interpretation of the matter in dispute advanced by EPA shall be considered binding unless Settling Defendants invoke the dispute resolution provisions of this Section.

B. Except as provided in paragraph D, any dispute that arises with respect to the meaning or application of this Decree shall, in the first instance, be the subject of informal negotiations between the Parties. Settling Defendants shall commence informal negotiations by notifying the United States that Dispute Resolution is being invoked. Informal negotiations shall not extend beyond 30 days from the date EPA receives notification unless the Parties agree otherwise in writing.

C. If the dispute is not resolved through informal negotiations, Settling Defendants may file with the Court a petition requesting the Court to hear and resolve the matter.

The petition shall describe the nature of the dispute and include a proposal for its resolution. The filing of a petition asking the Court to resolve a dispute shall not of itself postpone the deadlines for Settling Defendants to meet their obligations under this Decree or stay the accrual of stipulated penalties with respect to the disputed issue. However, the obligation to pay stipulated penalties shall be stayed pending resolution of the dispute. The United States shall have 30 days to respond to the petition.

D. Special Dispute Resolution

(1) In any dispute arising out of an EPA determination to perform a portion or all of the Remedial Action under Section VI B, the Settling Defendants shall have 15 days from receipt of EPA's notice of intent and basis of determination to commence informal negotiations by notifying the United States that Dispute Resolution is being invoked. Informal negotiations shall not extend beyond 15 days from the date EPA receives notification unless the Parties agree otherwise in writing.

(2) If the dispute is not resolved through informal negotiations, the Settling Defendants may file with the Court a petition requesting the Court to hear and resolve the matter. The petition shall describe the nature of the dispute and include a proposal for its resolution. The effect of filing a petition on the Settling Defendants' obligations under this Decree and accrual of stipulated penalties shall be controlled by Section VI

B. The United States shall have 15 days to respond to the petition.

E. In any dispute arising under this Consent Decree involving matters covered by subsections 113(j) or (k) of CERCLA, the Court shall apply the applicable standards and provisions of such subsections. The Parties reserve their respective rights to make any arguments concerning what standards and provisions are applicable.

F. Unless otherwise specifically set forth herein, the fact that Dispute Resolution is not specifically set forth in the individual Sections of this Consent Decree is not intended to and shall not bar Settling Defendants from invoking this Section as to any disputed issue arising under this Consent Decree, including any dispute concerning the exercise of discretion by EPA under the terms of this Consent Decree.

XXIII. COMPUTATION OF TIME

Except where noted otherwise, all time periods referred to in this Decree or attachments hereto are calendar days. Deadlines falling on a weekend or a federal holiday shall be extended until the next business day.

The terms "submit" and "provide" as used herein shall refer to the date on which the item in question is to be sent by the appropriate Party. Submissions postmarked or tendered to delivery services described in Section XXIV on the deadline date shall be deemed timely.

XXIV. NOTICES AND SUBMISSIONS

All notices and submissions required to be given pursuant to this Consent Decree shall be in writing unless otherwise expressly authorized. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Decree shall be sent by certified mail, overnight express mail or some equivalent delivery service to the following addressees or to such other addressees as the Parties hereafter may designate in writing:

As to the United States:

- (1) Chief
Environmental Enforcement Section
Land and Natural Resources Division
Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, DC 20530
- (2) EPA addresses listed below

As to EPA:

- (1) Chief, Superfund Enforcement Branch
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733
- (2) EPA Project Coordinator - French Site
Superfund Compliance Section (6H-EC)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733
- (3) Office of Regional Counsel (6C-H)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733
- (4) Contractors as directed

As to the Texas Water Commission

Texas Water Commission
Hazardous and Solid Waste Division
Capitol Station
Austin, TX 78711-1308
Attention: TWC Project Coordinator/French Site

As to the Settling Defendants:

- (1) Carl B. Everett, Esq.
Saul, Ewing, Remick & Saul
3800 Centre Square West
Philadelphia, PA 19102
- (2) V. Peter Wynne, Esq.
Arco Chemical Company
3801 West Chester Pike
Newtown Square, PA 19073
- (3) Mr. Richard L. Sloan
Arco Chemical Company
3801 West Chester Pike
Newtown Square, PA 19073
- (4) Molly J. Cagle, Esq.
Vinson & Elkins
First City Centre
816 Congress Avenue
Austin, TX 78701-2496

XXV. ADMISSIBILITY OF DATA

A. Except as provided below and for the purpose of this action only, the Parties waive any evidentiary objection to the authenticity of any data gathered or generated, in the performance or oversight of the activities under this Decree. Such evidentiary objection to authenticity shall include, without limitation, objection based upon the failure to offer testimony or evidence concerning gathering and sampling procedures, chemical analysis, chain of custody, field and laboratory quality

assurance and quality control procedures, and objection based upon the failure to offer any sponsoring witness, including but not limited to gatherers, samplers, chemists, and their assistants, and persons in the chain of custody. The Parties also waive any objection to the introduction of such data based on hearsay.

B. Neither Party waives any objection to data admissibility on grounds other than authenticity or hearsay or the right to challenge the credibility of any data in evidence.

XXVI. INDEMNIFICATION

The Settling Parties agree to indemnify, save and hold harmless the United States from any and all claims or causes of action arising from negligent acts or omissions or willful misconduct of the Settling Parties in carrying out activities for which the Settling Parties are responsible pursuant to this Consent Decree.

XXVII. LIABILITY

The United States shall not be liable for any injuries or damages to persons or property resulting from any acts or omissions of the Settling Parties, their officers, employees, agents, receivers, trustees, successors, assigns, contractors, subcontractors or any other person acting on their behalf in carrying out any activities pursuant to the terms of this Consent Decree. The Settling Parties shall not be liable for and do not

assume liability for any injuries or damages to persons or property resulting from acts or omissions of the United States or any person acting by, through or under them or on their behalf in carrying out any activity under this Consent Decree.

XXVIII. RESERVATION OF RIGHTS/RETENTION
OF CLAIMS

Nothing in this Consent Decree shall constitute or be construed as a covenant not to sue with respect to, or a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a party to this Consent Decree.

XXIX. SATISFACTION

The provisions of this Consent Decree shall be deemed satisfied upon the Settling Defendants' receipt of written notice from EPA that the Settling Defendants have demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Decree have been completed and upon approval of the Court.

XXX. SECTION HEADINGS

The section headings set forth in this Decree and its Table of Contents are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Decree.

XXXI. MISCELLANEOUS

A. The Parties represent that this Decree was negotiated in good faith and that, for the purposes of this Decree, the mutual obligations represent a fair and equitable assumption of the Settling Defendants' alleged responsibilities for matters concerning the Site, considering, among other factors, the fact that it is in the best interest of the United States to encourage equitable settlements without burdensome litigation.

B. The execution of this Decree is not an admission of liability by any Settling Defendant under federal or state law, including common law, with respect to the Site.

C. This Decree shall not be admissible in any judicial or administrative proceeding except such proceedings (1) to enforce this Decree, (2) between a Settling Defendant and its insurance company concerning the obligation of the insurance company to pay sums that the Settling Defendant is paying pursuant to this Decree, or (3) between a Settling Defendant and any person alleged to be liable to the Settling Defendant for contribution or indemnification with respect to the Site.

D. The Appendices to this Decree, the Remedial Action Plan and the Post Closure Plan are expressly incorporated and made a part of this Decree.

E. This Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

XXXII. MODIFICATION

Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all parties to this Consent Decree and entry by the Court.

XXXIII. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the Parties to this action for the duration of this Consent Decree for the purposes of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree or for any further relief as the interest of justice may require.

XXXIV. PUBLIC COMMENT

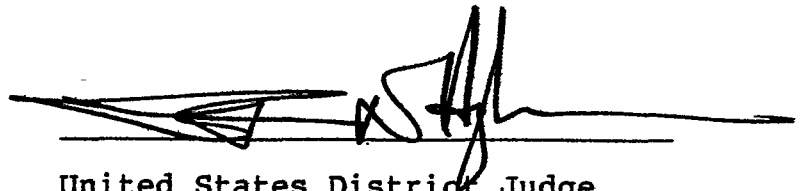
The parties hereto stipulate and agree that entry of this Decree is subject to the public comment requirements of CERCLA.

XXXV. EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by the Court.

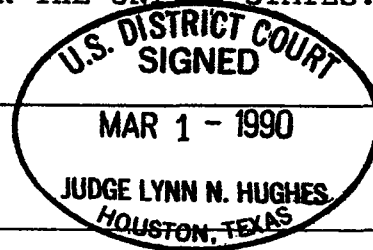
1990.

SIGNED and ENTERED this 1st day of March,



United States District Judge

FOR THE UNITED STATES:



RECEIVED
MAR 1 1990
U.S. DISTRICT COURT
HOUSTON, TEXAS
CLERK OF COURT
MAR 1 1990

FOR THE UNITED STATES OF AMERICA



ROBERT E. LAYTON, JR.
Regional Administrator
U.S. Environmental Protection Agency
Region VI
Dallas, Texas 75202

Dated: Dec. 23, 1988




PAMELA PHILLIPS
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VI
Dallas, Texas 75202

Dated: 10-28-88



~~THOMAS L. ADAMS, JR.~~ EDWARD E REICH
Acting Assistant Administrator for
Enforcement & Compliance Monitoring
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dated: 6/14/89



Donald A. Carr
Acting Assistant General Counsel
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dated: 7-19-89

HENRY K. ONCKEN
United States Attorney
Southern District of Texas
515 Rusk, Room 21000
Houston, Texas 77002

Dated: _____

For the Settling Defendants:

French Limited, Inc.

By: George A. Whitten
George A. Whitten, President

6/28/89
Date

French Limited of Houston, Inc.

By: George A. Whitten
George A. Whitten, President

6/28/89
Date

George A. Whitten
George A. Whitten, Individually,

6/28/89
Date

For the Settling Defendants:

Luther P. Hendon
Luther P. Hendon, Individually

June 24, 1989
Date

For the Settling Defendants:

 *
Signature

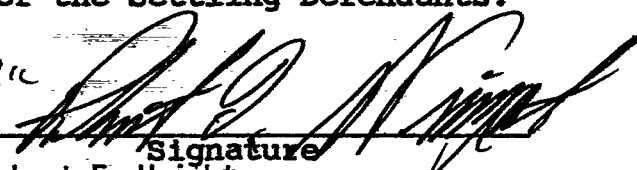
September 14, 1988
Date

Executive Vice President
Title

Allied-Signal Inc.
Company

* This Consent Decree shall not in any way affect the legal rights and obligations of Allied-Signal Inc. and Phillips Petroleum Company as set forth in a separate agreement dated June 22, 1988.

For the Settling Defendants:

cc 

Signature

Robert F. Wright,

9/16/88

Date

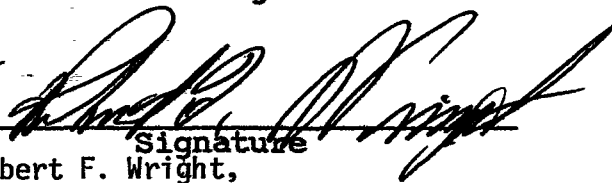
President

Title

AMERADA HESS CORPORATION

Company

For the Settling Defendants:

Cs. 

Signature

Robert F. Wright,

9/16/88

Date

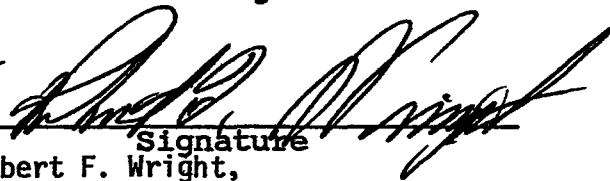
President

Title

AMERADA HESS CORPORATION

Company

For the Settling Defendants:

CS- 

Signature

Robert F. Wright,

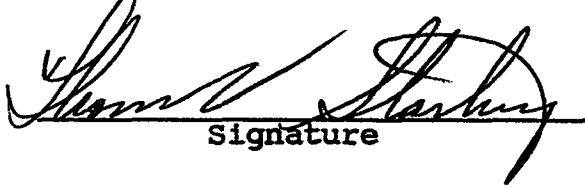
9/16/88
Date

President

Title

AMERADA HESS CORPORATION
Company

For the Settling Defendants:


Signature

September 13, 1988
Date

President
Title

American Plant Food Corporation
Company

For the Settling Defendants:

Daniel Coffman
Signature

September 26, 1988
Date

Director, Superfund & Hazardous Substances
Title

Amoco Gas Company
Company

For the Settling Defendants:



Signature

Morris Gelb

Date

Vice President Research and Engineering
Title

ARCO Chemical Company

Company

For the Settling Defendants:

Robert W. Kent

Signature

Corporate Vice President - Law,
General Counsel and Secretary

Title

Armco Inc.

Company

September 14, 1988

Date

For the Settling Defendants:

USA [Signature]
Signature

9/19/88
Date

Administrative Vice President
Title

Ashland Chemical Company,
A Division of Ashland Oil, Inc.
Company

For the Settling Defendants:

Samuel T. Holtzman
Signature

9/30/88
Date

ATTORNEY
Title

BERNINO Railway SERVICE Co.
Company

For the Settling Defendants:

William D. Leake
Signature

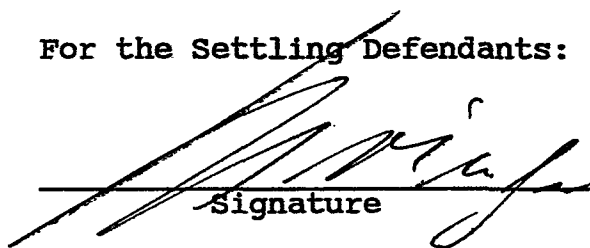
October 6, 1988

Date

Vice President, Corporate
Environmental Protection
Title

Atlantic Richfield Company
Company

For the Settling Defendants:


Signature

9/23/88
Date

Pro
Title

BIENH & CO.
Company

For the Settling Defendants:


Carl H. Moerer, Jr.

Signature

September 14, 1988

Date

Assistant General Counsel

Title

Big Three Industries, Inc.

Company

For the Settling Defendants:



Signature

October 11, 1988
Date

Assistant General Counsel
Title

Brown & Root, Inc.
Company

For the Settling Defendants:


Signature

Gerald K. Burger

Vice President and Secretary
Title

Browning-Ferris Industries Chemical
Services, Inc. and its affiliates
Company

September 14, 1988
Date

For the Settling Defendants:

Gilbert H. Tausch Gilbert H. Tausch
Signature

September 20, 1988
Date

President

Title

Camco, Incorporated

Company

For the Settling Defendants:



Signature

September 13, 1988

Date

Secretary

Title

Cameron Iron Works USA, Inc.

Company

For the Settling Defendants:

William B. Lewis
Signature

10/12/88
Date

President
Title

The Celotex Corporation
Company

For the Settling Defendants:

Chad Chambers
Signature

October 10, 1988
Date

Title

Chambers & Kennedy
Company

For the Settling Defendants:

Benjamin S. Blum
Signature

Senior Associate Counsel
Title

Champion International Corp.
Company

12/22/88
Date

For the Settling Defendants:



Signature

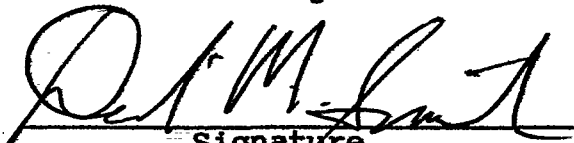
October 14, 1988
Date

VICE PRESIDENT

Title

Chas. Martin Inspection and Controls,
Company
Inc.

For the Settling Defendants:


Signature

DAVID M. SMITH

President

Title

CHEMICAL EXCHANGE INDUSTRIES, INC.

Company

September 15, 1988

Date

FRENCH LIMITED CONSENT DECREE

For the Settling Defendants:


Signature

Sept. 13, 1988
Date

Vice President and General Manager
Olefins & Derivatives Division
Title

Chevron Chemical Company
Company

For the Settling Defendants:

Thomas L. Qualey
Signature

February 2, 1989

Date

Vice-President - Legal

Title

Crown Central Petroleum Corporation

Company

For the Settling Defendants:

Robert Johnson
signature

10/12/88
Date

VICE PRESIDENT ENVIRONMENTAL AFFAIRS
Title

DIXIE CHEMICAL CO.
Company

For the Settling Defendants:


Signature

September 16, 1988
Date

Manufacturing Technical Director
Title

The Dow Chemical Company
Company

For the Settling Defendants:


Signature

October 3, 1988

Date

Government/Business Affairs Counsel
Title

Dresser Industries, Inc.
Company

For the Settling Defendants:

R. D. Porter
Signature

R. D. Porter

Plant Manager

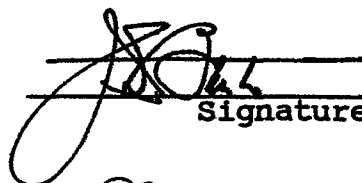
Title

9-13-88
Date

E. I. du Pont de Nemours & Company, Inc.

Company

For the Settling Defendants:


Signature

PRESIDENT
Title

EDDY REFINING COMPANY
Company

SEP. 13, 1988
Date

For the Settling Defendants:


Signature

L. B. Reynolds

General Manager-Industrial Chemicals
Title

ETHYL CORPORATION

Company

October 13, 1988
Date

For the Settling Defendants:

Dan Mendelsohn ^{DEC}
Signature JRM

Oct. 25, 1988
Date

Agent and Attorney-in-Fact
Title

Exxon Corporation
Company

For the benefit of Exxon Corporation,
Exxon Chemical Americas (Enjay Chemical Company) and Exxon Production
Research Company.

For the Settling Defendants:


Signature

APPROVED
Form 
Trans. 

October 27, 1988
Date

Vice President - Production
Title

EXXON PRODUCTION RESEARCH
COMPANY
Company

For the Settling Defendants:

Roger C. Swift
Signature

9/13/1988
Date

Regional Vice President
Title

GATX Terminals Corporation
Company

For the Settling Defendants:

Bruno P. Stuzzo
Signature

Nov. 7, 1988
Date

Assistant General Counsel
Title

General Foods Corporation
Company

For the Settling Defendants:

W Birdwell
Signature

September 14, 1988

Date

W Birdwell - Vice President
Title

THE GOODYEAR TIRE & RUBBER COMPANY
Company

Attest:

[Signature]
Assistant Secretary

For the Settling Defendants:

Bruce T. Anderson

Signature

Executive Vice President
Agricultural Chemicals Group

Title

W. R. Grace & Co.

Company

9-12-88

Date

For the Settling Defendants:
WILLIAM J. WAY



Signature

October 14, 1988

Date

Vice President

Title

Gulf States Asphalt, Inc.

Company

For the Settling Defendants:



Signature

A.A. Baker
President

Title

HALLIBURTON SERVICES, a Division
of Halliburton Company

Company

December 29, 1988

Date

| |
|---------------------------|
| REVIEWED |
| OPERATIONS _____ |
| LEGAL <i>RCB 12-29-88</i> |
| FINANCIAL _____ |

For the Settling Defendants:

 *res*
Signature

September 13, 1988
Date

Vice President and General Counsel
Title

Hercules Incorporated
Company

For the Settling Defendants:



Signature

September 13, 1988
Date

Vice President & General Manager
Title

Mitchell Energy Corporation
Company

For the Settling Defendants:



Signature

September 15, 1988

Date

Associate General Counsel
Title

Hoechst Celanese Corporation
Company

For the Settling Defendants:

WM Ed Burger
Signature

9-12-88
Date

Vice President
Title

Houston Pipe Line Company
of which Houston Natural Gas Corp
is a division
Company

For the Settling Defendants:

GA *Pat M. McCarty*
Signature

1/23/89
Date

GENERAL MANAGER
Title

HUDSON ENGINEERING CORPORATION
Company

For the Settling Defendants:

Samuel T. Holtzman
Signature

9/30/88
Date

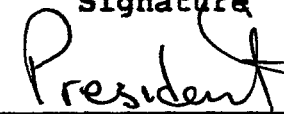
ATTORNEY
Title

BERNINO Railway Service Co.
Company

For the Settling Defendants:

x 

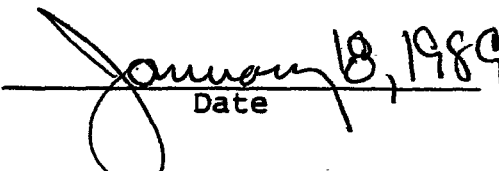
Signature



Title



Company



Date

For the Settling Defendants:

John C. MacFarlane
Signature

September 8, 1988
Date

Vice President, Finance
Title

Hughes Drilling Fluids
Company

For the Settling Defendants:

George S. Finley
Signature

September 8, 1988
Date

Vice President

Title

Hughes Tool Company

Company

For the Settling Defendants:

Steven C. Donato
Signature

September 15, 1988

Date

Assistant Secretary

Title

J. M. Huber Corporation

Company

For the Settling Defendants:



John A. Moore
Signature
J. A. Moore
Vice President
Title

September 9, 1988
Date

Kaiser Aluminum & Chemical Corporation
Company
(A De Minimis Settling Defendant
Subject to Reopener Under
Section XVIII F)

For the Settling Defendants:

John K. [Signature]
Signature

12/27/88
Date

President KI
Title

Keith Inc. / Maintenance Eng.
Company

For the Settling Defendants:

Joe M. Blunk
Signature

9/15/88
Date

Vice President
Title

Koppers Company, Inc.
Company

For the Settling Defendants:



Signature

November 21, 1988

Date

Vice-President

Title

Lone Star Gas Company

Company

For the Settling Defendants:


Signature

David A. Muskat

Division Head - U.S.A. Operations
Title

September 14, 1988
Date

The Lubrizol Corporation
Company

For the Settling Defendants:

Allan J. Goertz
Signature

9-13-88
Date

VICE PRESIDENT
Title

MERCHANTS METALS, INC.
Company

For the Settling Defendants:

HW Plummer
Signature

10/13/88
Date

Vice President
Title

Merchem Co
Company

For the Settling Defendants:

John C. MacFarlane
Signature

September 8, 1988
Date

Vice President, Finance
Title

Milchem, Incorporated
Company

For the Settling Defendants:

Anthony J. Sabowski
signature

Sept. 14, 1988
Date

Vice President, Environmental, Health and Safety
Title

Nalco Chemical Company
Company

For the Settling Defendants:

Janet D. Smith
Signature

9/9/88
Date

Associate General Counsel
Title

NL Industries, Inc.
Company

For the Settling Defendants:

James H. Levine
Signature

9-12-88
Date

PRESIDENT
Title

NEWARK Shipbuilding and Repair INC.
Company

For the Settling Defendants:

My J. L. L. L.
Signature

Sept. 16, 1988
Date

Treasurer
Title

OAKITE PRODUCTS, INC.
Company

For the Settling Defendants:



Signature

Michael J. Rudick

Vice President

Title
Occidental Chemical Corporation
(as successor to Diamond Shamrock
Chemicals Company, formerly
Diamond Shamrock Corporation)

Company

September 14, 1988
Date

[Consent Form for Consent Decree in United States
of America v. French Limited Task Group]

For the Settling Defendants:

Kathryn F. Christiansen, Esq.
Signature
KATHRYN F. CHRISTIANSEN

Sept. 9, 1988

Date

Counsel

Title

Owens-Corning Fiberglas Corp.

Company

For the Settling Defendants:

Quinn D. Wong
Signature


9/14/88

Date

Manager, Environmental Affairs
Title

Paktank Corporation
Company

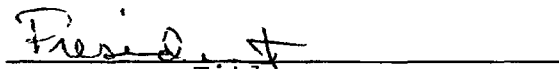
For the Settling Defendants:



Signature

10.13.88

Date



Title



Company

For the Settling Defendants:

William W. Conner
Signature

Allan W. Parker

Vice President

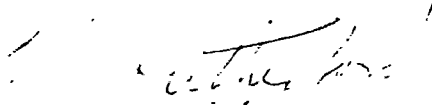
Title

May 15, 1989
Date

Parker Brothers & Co., Inc. (Allied Fence)

Company

For the Settling Defendants:



Signature

September 23, 1988

Date

President-Lucidol Division

Title

Pennwalt Corporation

Company

For the Settling Defendants:

William G. Paul
Signature

September 8, 1988
Date

Senior Vice President and General Counsel
Title

Phillips Petroleum Company
Company

For the Settling Defendants:

Ronald F. Klawitter

Signature

September 8, 1988

Date

Vice President, Finance

Title

Plastic Applicators, Inc.

Company

For the Settling Defendants:



Signature

December 28, 1988

Date

President

Title

Platzer Shipyard, Inc.

Company

4
3
For the Settling Defendants:

DA PANGRA
For Michael E. Pangel
Signature

2-7-87
Date

ex President
Title

DA PANGRA
Company

For the Settling Defendants:

Susan G. Kuis

Signature

September 14, 1988

Date

Senior Attorney

Title

PPG Industries, Inc.

Company

For the Settling Defendants:

Charles A. Loull
Signature

September 13, 1988
Date

Vice President and General Counsel
Title

Reichhold Chemicals, Inc.
Company

For the Settling Defendants:



Signature

December 21, 1988

Date

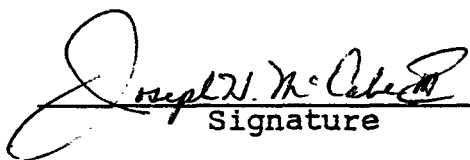
Vice-President, General Counsel

Title

Rohm and Haas Company

Company

For the Settling Defendants:



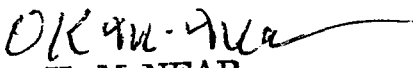
Signature

9/15/88
Date

President
Title

E.W. Saybolt & Co., Inc.
Company

For the Settling Defendants:


D. K. McNEAR

Signature

OCT 3 1988

Date

President & CEO
Title

Southern Pacific Transportation Company
Company

For the Settling Defendants:

Jessie E. London
Signature

April 4, 1989
Date

Southwest Chemical Services
Title

Company

For the Settling Defendants:

~~For the Owner/Operator/Transporter Defendants:~~

Gary L. Ford

Signature

3/6/89

Date

Assistant Director of Law

Title

STAUFFER CHEMICAL COMPANY

Company

For the Settling Defendants:


Signature

September 15, 1988
Date

Corporate Claims Manager
Title

Stewart & Stevenson Services, Inc.
Company

For the Settling Defendants:


Signature


dl 10-4-88

October 4, 1988
Date

Vice President and General Counsel
Title

"Tenneco" companies: Petro-Tex Chemical Corporation and Tenneco Polymers, Inc.
Company

For the Settling Defendants:



Signature
J. SAMUEL LISTIAN

ATTORNEY
Title

7/8/88

Date

TEXACO INC. AND TEXAS-NEW MEXICO PIPELINE CO.

Company

For the Settling Defendants:

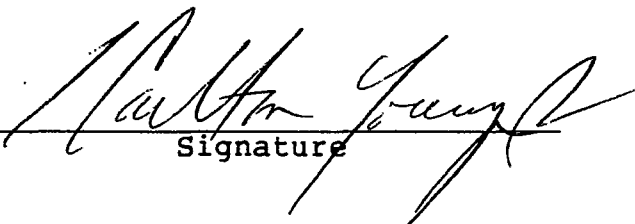

Signature

March 16, 1989
Date

Vice President - Operations
Title

Texas Eastern Products Pipeline Company
Company

For the Settling Defendants:



Signature

May 10, 1989

Date

Vice President

Title

Texasgulf Inc.

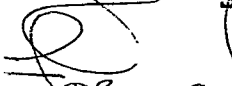
Company

For the Settling Defendants:



Signature

5/12/87
Date



Title

FORMER President TEXAS STEEL WIRE CORP

TEXAS STEEL WIRE CORP
Company

For the Settling Defendants:*

Harry C. Lee ^{DB} ^{CAO}
Signature Harry C. Lee

September 14, 1988
Date

Attorney-in-Fact

Title

Union Oil Company of California

Company

*French Limited Task Group

For the Settling Defendants:

Charles R. Hanson
Signature

10/7/88
Date

V.P. ENVIRONMENTAL MANAGEMENT
Title

Versicol Chemical Corp.
Company

APPENDIX A

RECORD OF DECISION

[PREVIOUSLY DISTRIBUTED]

APPENDIX B

De Minimis Settling Defendants

(1) De Minimis Settling Defendants Obtaining a Release from Future Liability

Amoco Gas Company

Chemical Exchange Industries, Inc.

J. M. Huber Corporation

(2) De Minimis Settling Defendants Subject to Reopener Under Section XVIII F

American Plant Food

Biehl & Company

Big Three Industries, Inc.

Brown & Root, Inc.

Cameron Iron Works USA, Inc.

Chambers & Kennedy

GATX

Houston Natural Gas Corporation

Kaiser Aluminum and Chemical Corporation

Nalco Chemical Company

Oakite Products, Inc.

Paktank Corporation

APPENDIX C

FRENCH LTD. SITE TRUST AGREEMENT

This Agreement is made and entered into effective as of the ____ day of _____, 1989, by and among (i) the parties listed on Exhibit A hereto as "Settlors", each of whom shall be either a "Full Settlor", a "Class A De Minimis Settlor", or an "Owner/Operator/Transporter Settlor", as indicated on Exhibit A, (ii) the parties listed on Exhibit A as "Class B De Minimis Companies," and (iii) First Interstate Bank of Texas, N.A. (the "Trustee").

RECITALS

A. The Settlers, the Class B De Minimis Companies and the United States of America ("United States") on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") have agreed to jointly seek a consent decree simultaneously with the filing by the United States of a certain civil action in the Federal District Court, Southern District of Texas. That consent decree, a copy of the agreed text of which is attached as Exhibit B hereto (the "Consent Decree"), will call for the implementation of remedial design, construction and action as described in the Record of Decision attached as Appendix A to the Consent Decree (the "Remedial Action") with respect to hazardous substances at the facility known as the French Ltd. Site located east of Houston near the City of Crosby, Texas (the "Site").

B. Each of the Settlers and Class B De Minimis Companies shall deliver to the Trustee pursuant to Sections 2.01 and 2.03 of this Agreement the funds therein described.

C. The Settlers, in compliance with the Consent Decree, wish for such funds to be held and administered by the Trustee, in such trusts and other arrangements as are established herein, for the purposes hereinafter set forth.

D. The Full Settlers have established a non-profit corporation known as FLTG Inc. to supervise and coordinate the Remedial Action. The Board of Directors of FLTG Inc. ("Board") shall designate a "Project Coordinator" to ensure compliance with the Consent Decree and may designate individuals to undertake various Board responsibilities under this Agreement. All designations and other communications by the Board to the Trustee shall be in writing.

E. Counsel for the United States has reviewed the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I

ESTABLISHMENT AND ACCEPTANCE OF TRUSTS

1.01 Establishment of Trusts. There are hereby established two separate and distinct express trusts under the laws of the State of Texas. The trusts so established shall be known as

the "French Ltd. Site Long Term Trust Fund" and the "French Ltd. Site Designated Settlement Trust Fund". These trusts are sometimes referred to in this Agreement as the "Long Term Trust" and the "DSF Trust", respectively, and are further sometimes referred to as the "Trusts".

1.02 Trust Purpose. The purpose of the Trusts is to provide for the collection, preservation, interim investment and disbursement of funds necessary to satisfy the respective obligations of the Settlers under the Consent Decree, including the obligations (a) to pay the costs of the Remedial Action, (b) to contribute to the reimbursement of the United States for certain costs as provided in Section 4.01 below, and (c) to pay other proper expenses relating to the Consent Decree. The Trusts are not intended, and no portion of any Trust funds shall be used, for purposes of satisfying any tort or other liability of any Settlor, relating to the Site or otherwise, except as expressly provided in this Agreement or the Consent Decree.

1.03 Nature of Funds. The funds contributed by any Settlor to either of the Trusts are not payments of fines, civil or criminal penalties or similar monetary sanctions, nor are they amounts forfeited as collateral posted in connection with a proceeding that could result in imposition of such fines, civil or criminal penalties or similar monetary sanctions. Furthermore, the contributions of the funds by the Settlers are made for the purposes specified in the Consent Decree and shall not be construed as an admission of storage, treatment, handling or dis-

posal of hazardous substances, as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 USC §9601(14), at the Site.

1.04 Acceptance of Trusts. The Trustee, by its execution of this Agreement, (i) accepts the Trusts established herein, (ii) accepts the rights, powers, duties and responsibilities of the Trustee set forth herein, (iii) agrees to perform its duties and responsibilities with respect to each Trust in accordance with the provisions of this Agreement and the Consent Decree, and (iv) agrees to act as disbursement agent for the purposes set forth in Sections 2.01 and 4.01 below.

ARTICLE II

CONTRIBUTIONS AND TRUST ESTATES

2.01 Contributions by Parties. Each Settlor and Class B De Minimis Company, within thirty days of the entry of the Consent Decree, shall deposit with the Trustee the amount of that party's required initial contribution as set forth on Exhibit A hereto. Each such party shall make its initial contribution in cash, and each Full Settlor shall deliver to the Trustee a letter of credit, bond, or other form of security instrument or assurance in accordance with Section 2.04 of this Agreement and acceptable to the Board ("Approved Assurance"), ensuring payment (upon demand by the Trustee) of the remaining amount of the contributions due from that Settlor (as its share of the first Fifty Five Million Dollars in trust contributions) as set forth on Exhibit A.

The contributions so made by the Full Settlers shall constitute the Trust Estate of the Long Term Trust, and the contributions so made by the Owner/Operator/Transporter Settlers shall constitute the Trust Estate of the DSF Trust. As used in this Agreement, "Trust Estate" as to each of the Trusts means those contributions and all other assets, however and whenever acquired, that may belong to that Trust at any designated time, including without limitation any additional contributions by the Settlers and any income or other gains received by the Trustee in connection with investing the assets held in that Trust Estate. All references in this Trust Agreement to funds held in a Trust shall include property actually held in that Trust and, in the case of the Long Term Trust, shall also include the amount of all Approved Assurances.

The contributions so made by the Class A De Minimis Settlers and the Class B De Minimis Companies shall not be held in trust, but shall be held by the Trustee as disbursing agent for such parties, to be applied as provided in Section 4.01. The Trustee shall not be required to invest such funds pending their application, and the Trustee's sole responsibility and liability with respect to such funds shall be discharged upon the Trustee's application of the funds as provided in Section 4.01. Each of the Class B De Minimis Companies, by its execution hereof, agrees to make the contributions specified herein, but shall not be a Settlor of any of the Trusts created hereunder or a "Settlor" for any purpose of this Agreement.

2.02 Separate Shares. With respect to each Trust, the Trustee shall establish on its books for each Settlor of that Trust a separate and independent share of the Trust, and maintain records of contributions thereto by that Settlor, income and other receipts attributable to that Settlor's share, and all disbursements and payments chargeable against that Settlor's share. With respect to the DSF Trust, the share of each Owner/Operator/Transporter Settlor shall be a fixed percentage which is equal to the ratio of that Settlor's initial payment (as shown on Exhibit A) to the sum of such initial payments by all Owner/Operator/Transporter Settlers contributing to the DSF Trust. All income and other receipts of the DSF Trust shall be allocated to, and all disbursements and payments of the DSF Trust chargeable against, the shares of the Owner/Operator/Transporter Settlers in accordance with their respective percentage shares on the date of receipt or disbursement.

With respect to the Long Term Trust, the share of each Full Settlor shall be maintained as a separate account. Income and other receipts shall be separately credited to each such account based on that account's ownership interest in the assets giving rise to such income or receipt. In the absence of instructions as provided below, disbursements and payments shall be charged against the respective shares of the Full Settlers in percentages equal to (i) the percentage figure for each such Settlor in the Column of Exhibit A hereto captioned "Percentage of Subsequent Cash Calls-To \$100 Million," before the Threshold

Date (determined under Section 2.03 of this Agreement) and (ii) the percentage figure for each such Settlor in the Column of Exhibit A hereto captioned "Percentage of Subsequent Cash Calls-Over \$100 Million" with respect to all Excess Payments made on and after such Threshold Date.

Notwithstanding the foregoing, the Full Settlers are aware that the initial cash contribution of some Full Settlers according to Exhibit A hereto have been reduced to reflect earlier contributions made by those Settlers toward accomplishment of the goals of the Consent Decree. The Full Settlers have instructed the Board to cause their respective contributions, including those made through the Long Term Trust, to be brought into conformity with the percentages in the column of Exhibit A hereto captioned "Percentage of Subsequent Cash Calls-To \$100 Million." Therefore, the Trustee shall charge disbursements and payments from the Long Term Trust against the respective shares of the Full Settlers in accordance with any written instructions which the Board may issue to the Trustee in order to carry out such equalizing procedure. Each such set of written instructions shall (i) identify either the date by which, or the disbursement or disbursements as to which, it is to effective, (ii) be delivered to the Trustee at least 15 days prior to the first disbursement to be allocated thereunder, (iii) set forth, in substantially the format utilized by Exhibit A hereto, the percentage figure for each Full Settlor to be used while such instructions remain in effect and (iv)

clearly identify, by reference to total expenditures or otherwise, the period of time during which it is to remain in effect.

Each Full Settlor shall make the mandatory contributions required under Sections 2.03 and 6.02 below. In addition, each Full Settlor may make optional deposits of cash to its separate share of the Long Term Trust. To the extent that a Full Settlor makes such optional deposits of cash (in excess of the mandatory contributions required under the terms of this Agreement), the amount of the Approved Assurance required of such Settlor under Section 2.01 above shall be reduced.

2.03 Additional Contributions. The Full Settlers retain an unlimited obligation to ensure that, after exhaustion of the DSF Trust, the Trust Estate of the Long Term Trust is sufficient to provide for the uninterrupted progress and timely completion of the Remedial Action required under the Consent Decree. The Trustee shall make demand in writing upon the Full Settlers for additional contributions to the Trust (i) in accordance with the provisions of Section 6.02 below ("regular contributions"), and (ii) at any other time when such contributions ("extraordinary contributions") are necessary to enable the Trustee to make a payment called for under Article IV of this Agreement in order to satisfy the purposes of the Trust as set forth in Section 1.02. Whether and when such extraordinary contributions are necessary shall be determined by the Board. Within 15 days after the Trustee's receipt of written notice by the Board of the necessity for an extraordinary contribution, including the amount thereof, the

Trustee shall send written demand to the Full Settlers for such extraordinary contribution. When calls for regular contributions or extraordinary contributions are made, each Full Settlor's additional contribution shall be in the proportion specified in the column of Exhibit A hereto captioned "Percent of Subsequent Cash Calls-to \$100 Million."

The Trustee shall keep records of all Cumulative Project Expenditures, as defined below, and shall advise the Settlers thereof in conjunction with the annual March 31 reports called for under Section 6.02(a) of this Agreement. The "Cumulative Project Expenditures" as of a given date shall be equal to the sum of (i) all amounts (excluding those described in (ii) below) paid on or before such date by or on behalf of any of the Settling Defendants under the Consent Decree for purposes related to the Site, which amounts shall be certified in writing by the Board to the Trustee from time to time upon request and (ii) all amounts paid on or before such date from both of the Trusts and the disbursing agency hereunder pursuant to Section 4.01 and 4.02 of this Agreement. On the date ("Threshold Date") when Cumulative Project Expenditures first exceed \$100 million, then, in accordance with Section XVIII-F of the Consent Decree, all Class A De Minimis Settlers identified in Appendix B(2) of the Consent Decree shall, with respect to all Trust payments (or portions thereof) to be made in excess of such \$100 million amount ("Excess Payments"), become Full Settlers for all purposes of this Agreement, and each such Class A De Minimis Settlor so agrees by

its execution hereof. The Trustee shall thereupon establish additional shares of the Long Term Trust for such De Minimis Settlers, each of whom shall contribute thereto an amount of cash sufficient to bring that Settlor into full compliance as a Full Settlor with the provisions of Article VI of this Agreement (with respect only to Excess Payments), which amount shall be computed by the Trustee and delivered to such contributing Settlers within 30 days after the Threshold Date. Each De Minimis Class A Settlor shall make its contribution within 30 days of its receipt of such computation. After the Threshold Date, when calls (with respect to Excess Payments) for additional contributions are made by the Trustee under the preceding paragraph, the contribution of each Full Settlor (including those who previously were Class A De Minimis Settlers) shall be in the proportion specified in the column of Exhibit A hereto captioned "Percent of Subsequent Cash Calls-over \$100 Million."

The Full Settlers (including, from and after the Threshold Date, the former Class A De Minimis Settlers who have become Full Settlers under the provisions of the preceding paragraph) agree by their execution of this Agreement to satisfy all such future calls upon them for additional contributions to the Trust within 30 days of receipt of such written demand, which shall be deemed to have been received by each such Settlor at the close of business on the third business day following the day on which it is mailed to such Settlor in accordance with Section 10.04 below. If and to the extent that any such Settlor fails within such per-

iod to make such additional contribution, the Trustee may utilize therefor any cash or other assets then held in such Settlor's share of the Long Term Trust and/or may draw (in whole or in part) upon such Settlor's Approved Assurances; if funds cannot be timely obtained thereby, the other Settlers obligated with respect thereto shall make up any deficiency in that contribution with each nondefaulting Settlor contributing thereto in the same proportion as its contribution proportion bears to the total amount of contribution proportions for all nondefaulting Settlers as specified in the then applicable column of Exhibit A hereto; provided that demand is made therefor by the Trustee following its receipt from the Board of written notice that an extraordinary contribution is necessary for such purpose. Such nondefaulting Settlers shall have contribution rights against those who have failed to make proper payment pursuant to this Section.

2.04 Approved Assurances. The Full Settlers and Class A De Minimis Settlers identified in Appendix B(2) of the Consent Decree agree that the Board shall determine the types of assurances which may be used to satisfy their obligations under Section 2.01. In addition to those instruments described below, the Board may authorize use of assurances such as the financial test and corporate guarantee included among EPA's regulations applicable to owners and operators of permitted hazardous waste facilities.

Each instrument procured by a Full Settlor under Section 2.01 above as an Approved Assurance (i) shall be irrevoc-

able, (ii) shall be issued by a banking or other financial institution of sufficient size and creditworthiness (as determined by the Board, when compared to the amount payable under that instrument, to ensure the prompt payment of any part or all of such amount upon demand by the Trustee, (iii) shall be issued for a term which ends on the date which occurs one year after the effective date of the Consent Decree, (iv) shall allow for partial as well as full demands for payment thereunder and (v) shall include (among others) as an event empowering the Trustee to demand payment the failure of the Full Settlor procuring such instrument to deposit with the Trustee, on or before the date which occurs 30 days prior to termination of such instrument, a substitute instrument. Each such substitute shall be effective immediately upon the termination of the instrument for which it is substituted and shall be for a term which ends on the date which occurs one year after the expiration of the instrument for which it is substituted. Such substituted Approved Assurances shall continue to be required until after the Threshold Date. Notwithstanding the foregoing, however, the amount of the substituted Approved Assurance which each Full Settlor is required to deposit under the foregoing provisions need not be greater than the product which results when the percentage figure for such Settlor in the column of Exhibit A hereto captioned "Percent of Subsequent Cash Calls-To \$100 Million" is multiplied by a number equal to Fifty Five Million Dollars, reduced by the net fair market value of the funds (if any) held in the DSF Trust on

the Determination Date as defined below, and further reduced by the Cumulative Project Expenditures as of the Determination Date. For these purposes, the "Determination Date" shall be the first business day which occurs after the date which is 30 days prior to the deadline for depositing such substituted Approved Assurance.

The Full Settlers intend that, after Cumulative Project Expenditures have reached Fifty-Five Million Dollars, then additional Approved Assurances may be needed to assure the timely and orderly completion of the Remedial Action. Accordingly, the Board shall have the power to prescribe additional requirements, consistent with those set forth in Section 2.01 above, for Approved Assurances at that time, and shall prescribe such additional requirements unless it determines that the timely and orderly completion of the Remedial Action does not require further deposit of such Approved Assurances.

ARTICLE III

PROFESSIONAL SERVICES

3.01 Accounting Services. The Trustee, with the concurrence of the Board, shall engage a firm of independent certified public accountants ("Trust Accountants") to perform auditing and accounting services for each Trust. The Trustee may rely, and shall be protected in relying, on the reports of the Trust Accountants.

3.02 Other Professional Services. The Trustee may, with the concurrence of the Board, employ such third-party custodians, clerks, investment counsel, attorneys and other agents (including any firm or entity in which the Trustee may have an interest) and make from the Trust Estate of each Trust such payments therefor as it shall deem reasonable for the implementation of the purposes of that Trust. The Trustee may rely, and shall be protected in relying, upon an opinion of counsel.

ARTICLE IV

PAYMENTS FROM CONTRIBUTIONS AND TRUST ESTATES

4.01 Payments to the United States. The following payments shall be made from the initial contributions hereunder, and from the Trust Estates of the Trusts (to be allocated in accordance with 4.03 below), to the United States:

(a) Within 60 days of the effective date of the Consent Decree, the Trustee shall deliver to the United States the amount of \$1,275,000 as reimbursement for and in full settlement of the United States' claims for response costs incurred by it relating to the Site pursuant to Section XVI of the Consent Decree. Such payment shall be made first from the funds contributed by the Class A De Minimis Settlers and Class B De Minimis Companies in accordance with Section 2.01, and payment of the excess of \$1,275,000 over the sum of the contributions of all Class A De Minimis Settlers and Class B De Minimis Companies shall be made from the Trust Estates of the Trusts.

(b) The Settlers anticipate that, pursuant to Section XVI C of the Consent Decree, on July 31 of each year beginning with July 31, 1989, the United States will submit to the Settlers a demand for payment of all costs incurred by the United States relating to implementation of oversight of the Remedial Action during the preceding twelve months or such other applicable period. Each such demand shall promptly be submitted to the Trustee by the Board. The Board shall review the cost documentation supplied with the demand by the United States to verify that the claimed costs were incurred and that the amount of the demand was properly calculated. The Trustee, within 60 days of receipt of the demand for payment, acting as instructed by the Board or its designee, shall pay all costs approved in writing by the Board or such designee.

(c) In the event that the Full Settlers should become liable for the payment of stipulated penalties pursuant to Section XX of the Consent Decree, the Trustee, upon the direction of the Board, shall make payment thereof from the Trust in accordance with such Section.

(d) All payments made to the United States pursuant to this Section 4.01 shall be made by certified or cashier's check delivered and made payable in accordance with the applicable provisions of the Consent Decree.

4.02 Payment of Site Related Costs and Costs of Remedial Action. The Board shall submit invoices approved for pay-

ment to the Trustee for the fees and expenses incurred by or on behalf of the Settlers in implementing the Remedial Action, discharging the respective obligations of the Settlers under the Consent Decree, seeking recovery of additional funds for implementing the Remedial Action, and procuring the entry and enforcement of the Consent Decree. Pursuant to Section XII of the Consent Decree, the Trustee, acting as instructed in writing by the Board, shall pay from the Trust Estates of the Trusts (to be allocated in accordance with 4.03 below) the amount of such invoices to the contractors or others on whose behalf the invoices were submitted.

4.03 Allocation of Payments Between Trusts. It is the general intent of Settlers that the Trust purposes set forth in Section 1.02 of this Agreement shall be accomplished by first expending, until exhausted, the funds held in the Trust Estate of the DSF Trust and only thereafter by expending the funds held in the Trust Estate of the Long Term Trust. Therefore, all payments to be made from the Trust Estates of the Trusts under Section 4.01(a) or 4.01(b) of this Agreement and all payments to be made under Section 4.02 of this Agreement relating to implementation of the Remedial Action shall be made exclusively from the DSF Trust while it has any funds remaining, and from the Long Term Trust after the DSF Trust has been exhausted. However, no payments of stipulated penalties under Section 4.01(c) or payments under Section 4.02 other than those relating to implementation of the Remedial Action shall be made from the DSF Trust; such pay-

ments shall be made exclusively from the Long Term Trust, even while the DSF Trust remains funded. Upon request by the Trustee, the Board shall furnish a written determination as to which of the foregoing categories a given payment falls in, and the Trustee shall be protected in relying upon such written determination.

ARTICLE V

POWERS OF TRUSTEE

5.01 Investment Powers. The Trustee shall have the power to invest and reinvest any part or all of the monies actually held in the Trust Estate of each Trust in any of the following: (i) direct obligations of the United States government, (ii) obligations guaranteed by agencies of the United States government, (iii) common trust funds or mutual funds that invest in instruments described in (i) or (ii) above, (iv) common trust funds or money market funds that invest in short-term municipal bonds, and (v) only as to funds being held pending immediate investment or payment, short-term money market funds. However, except for funds being held pending immediate payment, the Trust Estate of the DSF Trust shall be invested exclusively in investment vehicles, listed among the foregoing, the income from which is exempt from federal income tax. In investing in the foregoing instruments or any combination, the Trustee shall act in its reasonable discretion; provided that in the event it receives written instructions from the Board regarding the acquisition or disposition of any such investment, the Trustee shall act in ac-

cordance with such instructions and shall be under no liability for the consequences of so acting.

5.02 General Powers of Trustee. To carry out the purposes of the Trusts, and subject to any limitations stated elsewhere herein, in addition to the rights, privileges and powers elsewhere herein vested in the Trustee and those now or hereafter conferred by law, the Trustee of each of the Trusts shall have the power:

(a) To incur and pay from the Trust Estate any and all charges, taxes, and expenses (relating solely to internal Trust matters) in connection with the Trust or the Trust Estate in the discharge of its fiduciary obligations under this Agreement, provided, that nothing herein shall obviate the necessity for the Trustee to act only on instructions as provided herein from the Board or its designee in making payments from the Trusts relating to the Remedial Action;

(b) To hold and retain (during the term of the Trust) all or any part of the Trust Estate in the form in which it is received by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention;

(c) To sell, exchange, partition or otherwise dispose of all or any part of the Trust Estate at public or private sale, without prior application to or approval by or order of any

court, upon such terms and in such manner and at such prices as it shall determine;

(d) To hold any Trust securities or other property in the name of a nominee, in street name, or by other titleholding device, without indication of trust and without thereby increasing its liability for loss;

(e) To hold any property belonging to the Trust at any place in the United States;

(f) Upon request by the Board to assist FLTG, Inc. in representing the Settlers with regard to any matter concerning the Trust before any federal, state or local agency or authority which has authority or attempts to exercise authority over the work required by the Consent Decree or over any matter which concerns the Consent Decree or this Agreement;

(g) To maintain and defend any claim or controversy by or against the Trust, including instituting and defending litigation, provided, that all action taken in connection with a claim or controversy surrounding the Remedial Action (and not relating solely to internal Trust matters) shall require the approval of the Board; and

(h) To delegate to the Project Coordinator or other agents or delegees such ministerial powers and duties as it may deem to be advisable. In addition to the foregoing, subject to the approval of the Board, the Trustee shall have the power to take other actions (not specifically prohibited herein) which it may deem necessary or proper to aid in exercising its specific

powers and discharging its duties hereunder. The powers granted the Trustee hereunder may be exercised upon such terms as the Trustee deems advisable and may affect properties of a Trust for any length of time regardless of the duration of that Trust. The powers of the Trustee as to each Trust shall exist until all of the Trust Estate has been distributed, which shall occur as rapidly as is practical following that Trust's termination.

ARTICLE VI

ACCOUNTS AND RECORDS

6.01 Accounting Records. The Trustee shall keep or cause to be kept proper books, records and accounts of all transactions relating to each Trust, and the separate share of that Trust of each Settlor, in such form and manner as will comply with applicable standards and regulations and enable the Trustee to produce all reports and accountings called for herein. All such books, records and accounts shall be preserved and retained for at least six (6) years after the completion of the Remedial Action.

6.02 Reports. The Trustee shall prepare and submit reports with respect to each Trust as follows:

(a) Within 30 days of the close of each calendar quarter, the Trustee shall deliver to the Board (i) a statement of receipts and disbursements consisting of the Trust Estate balance at the beginning of such quarter, the receipts and disbursements for such quarter and the Trust Estate balance at the end of such

quarter; and (ii) a statement of Trust assets as of the close of such quarter that is in agreement with the ending Trust Estate balance shown in such statement of receipts and disbursements. By each March 31, the Trustee shall submit to the Board and to each Settlor a statement of receipts and disbursements and a statement of Trust assets for the prior year ended December 31, accompanied by a report of the Trust Accountants stating that an audit of such financial statements has been made in accordance with generally accepted auditing standards, stating the opinion of the Trust Accountants in respect of the financial statements and the accounting principles and practices reflected therein as to the consistency of the application of the accounting principles, and identifying any matters to which the Trust Accountants take exception and stating, to the extent practicable, the effect of such exception on such statements. With respect to the Long Term Trust, and that portion (if any) of the DSF Trust which is also treated as a grantor trust for federal income tax purposes, such annual reports shall include sufficient information, as determined by the Trust Accountant, regarding all items of income, deduction and credit for federal income tax purposes attributable to each Settlor's separate share of the Trust to enable such Settlor to include those items on its federal and any applicable state income tax returns.

(b) Within 60 days of the effective date of this Agreement, and for each calendar quarter thereafter, the Trustee shall submit to the Board, to each Settlor and to EPA financial reports

that shall include a balance sheet for the period just ended and a projected expense statement for all Site-related obligations, including but not limited to the obligations described in Section 1.02 hereof, for the upcoming quarter. In preparing the portion of such reports relating to projected expenses for Site-related obligations, the Trustee shall utilize and may rely upon projections thereof furnished to the Trustee by the Board, which projections, for each calendar quarter, the Board shall furnish no later than the first business day of such quarter. If the sum of (i) the funds (if any) then held in the Trust Estate of the DSF Trust and (ii) the available funds (excluding any Approved Assurances deposited under Section 2.01 of this Agreement) then held in the Trust Estate of the Long Term Trust is less than the amount ("Cushion Amount") which is equal to two times the amount of the projected expenses for the upcoming quarter, then the Full Settlers shall contribute to the Long Term Trust, as provided in Section 2.03 of this Agreement, within 30 days of receipt of the Trustee's report, cash funds in an amount equal to the difference between such sum and the Cushion Amount. The report of the Trustee shall include the portion of such contribution due from each Full Settlor, computed in accordance with the provisions of this Section and Section 2.03 above, and shall be deemed to have been received by each Full Settlor at the close of business on the third business day following the day on which it is mailed to such Settlor in accordance with Section 10.04 below. The finan-

cial reports to be submitted to EPA shall be sent, postage prepaid,
to:

Chief, Superfund Enforcement Branch
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

and

EPA Project Coordinator - French Site
Superfund Compliance Section (6H-EC)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 77202-2733

and

French Ltd. Site Coordinator
Office of Regional Counsel (6CH)
1445 Ross Avenue
Dallas, Texas 77202-2733

6.03 Right to Inspect. Each Settlor and its designees shall have the right at all reasonable times and upon reasonable notice to inspect all records, accounts, and data of the Trustee relating to the Trust Estate of each Trust.

ARTICLE VII

RIGHTS AND LIABILITIES OF TRUSTEE

7.01 Extent of Liability. The Trustee shall hold, administer, deposit, secure, invest, and use the Trust Estate of each Trust as required by this Agreement and the Consent Decree, shall follow the directions of the Settlers and the Board that are given in accordance with the express provisions of this Agreement and do not conflict with the Consent Decree or this Agreement, and shall perform the other agreements made by the Trustee

under the provisions of this Agreement. In so discharging its duties, the Trustee shall act in its discretion and shall not be liable for any act or omission to act except in the case of its negligence, or willful misconduct.

7.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Agreement upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed in good faith by the Trustee to be genuine and to have been signed or sent by the person or persons authorized so to act.

7.03 Trustee's Compensation. The Trustee shall be compensated by payment from the Trust Estate of each Trust of the fees for its services hereunder in accordance with Exhibit C attached hereto. The Trustee shall also be entitled to reimbursement from the Trust Estate of each Trust for all reasonable expenses, advances, and counsel fees, reasonably incurred by the Trustee in the administration of that Trust or in connection with any of its rights, duties or obligations hereunder. The Trustee shall also be entitled to reimbursement for all extraordinary costs and expenses incurred by the Trustee in connection with any and all matters related to either of the Trusts, including all costs, damages, expenses, judgments and liabilities of whatever nature, including, but not limited to, attorneys', accountants' and other professional fees, litigation and court costs and expenses, amounts paid in settlement, amounts paid to discharge

judgments and other amounts payable by the Trustee to any other person or entity, but excluding any costs or expenses incurred as a result of the Trustee's negligence or willful misconduct. The amount of any such reimbursement payment shall be deemed to constitute a proper expense relating to the Consent Decree under Section 1.02 above, shall be paid from the Long Term Trust, and to the extent necessary shall be funded through a demand by the Board and contributions from the Full Settlers in the manner provided for under this Agreement in the case of extraordinary contributions within the meaning of Section 2.03 above.

7.04 Limitation on Financial Liability. No provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Agreement, whether or not directed hereunder to take such action, which in the judgment of the Trustee may reasonably conflict with any rule of law, or with the terms of this Agreement or which would be unjustly prejudicial to the Settlers not taking part in such direction. When acting as directed by the Board pursuant to this Agreement, the Trustee may take other action deemed proper by the Trustee that is not inconsistent with such direction; provided, however, the

terms of this section shall not impose any additional duties or responsibilities upon the Trustee.

ARTICLE VIII

OFFICE OF TRUSTEE

8.01 Resignation of Trustee. The Trustee may at any time resign from the Trusts without necessity of any court proceeding by giving not less than 60 days written notice to the Settlers. Such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed by the Settlers as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment and acceptance of the successor Trustee.

8.02 Removal of Trustee. Notwithstanding Section 8.03 hereof, the Trustee may be removed by the Settlers (in accordance with Section 10.08 of this Agreement) at any time, with or without cause, by giving to the Trustee at least 60 days' advance notice of such removal (which period may be waived or reduced with the Trustee's consent) in an instrument or concurrent instruments in writing, delivered to the Trustee and signed by the Settlers who join in taking such action.

8.03 Appointment of Successor Trustee. In the event that the Trustee hereunder shall resign, be removed, or otherwise cease to act as Trustee, a successor may be appointed by the Settlers by an instrument or concurrent instruments in writing, signed by such Settlers, or by their attorneys in fact duly

authorized in writing, and delivered to the Trustee. A successor Trustee shall be a trust company or bank in good standing, authorized to act as Trustee under the laws of the State of Texas.

8.04 Transfer to Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, title to Trust assets, trusts, duties, and other obligations hereunder of its predecessor. However, such predecessor shall nevertheless, upon written request of the Successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, title to Trust assets, trusts, duties, and other obligations of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all reasonable, customary and legally accrued fees, advances, and expenses of any such predecessor Trustee shall be paid in full.

8.05 Accountings to Successor Trustee. Each resigning Trustee or removed Trustee shall account to its Successor Trustee and to the Settlers for its administration of the Trusts. No Successor Trustee shall be obligated to independently verify or seek alteration of the accounting of any predecessor Trustee, nor shall any Successor Trustee be personally liable for failure to

do so or for any act or omission to act of any predecessor Trustee. These provisions shall not prevent any Successor Trustee or other interested party from taking any action otherwise proper in connection with any such accounting.

8.06 Corporate Changes Relating to Trustee. If any bank or trust company ever succeeds to the business of an incumbent Trustee of serving as a fiduciary by means of a merger, consolidation, change of name, or any other form of reorganization, or if an incumbent Trustee ever transfers all of its existing business of serving as a fiduciary to any bank or trust company, such other bank or trust company shall thereupon without further action succeed the incumbent as Trustee, as if originally named herein.

ARTICLE IX

TERMINATION OF TRUSTS

9.01 Termination of Long Term Trust. The Long Term Trust shall terminate when the Settlers have received written notice from EPA of satisfaction of the terms of the Consent Decree in accordance with Section XXIX thereof. Notwithstanding the foregoing, if the Consent Decree has not become effective on or before December 31, 1990, the Long Term Trust shall terminate on that date and the obligations of the Settlers to make contributions hereunder shall also be terminated.

Following termination of the Long Term Trust and the payment of all outstanding liabilities of the Trust, including

any final Trustee fees, the Trustee shall distribute to each Full Settlor the portion of any remaining Trust Estate in that Settlor's separate share of the Long Term Trust. If any Settlor, or its successors, cannot be located within one hundred eighty (180) days after the termination date after diligent effort, its share of the Trust Estate shall be deemed to be waived, and the Trustee shall distribute that share to the remaining Full Settlers in proportion to their respective obligations to make contributions to the Trust Fund (as provided in Exhibit A) immediately prior to the termination of the Long Term Trust.

9.02 Termination of DSF Trust. The DSF Trust shall terminate when all of its Trust Estate has been distributed in accordance with the provisions of this Agreement. However, if the DSF Trust is still in existence at the termination of the Long Term Trust by reason of satisfaction of the terms of the Consent Decree in accordance with the provisions of Section 9.01, the DSF Trust shall then terminate. Following such termination and the payment of all outstanding liabilities of the Trust, including any final Trustee fees, any remaining Trust Estate shall be distributed to the EPA Hazardous Substances Superfund, but if such fund is not then in existence, to the Treasury of the United States of America. Notwithstanding the foregoing, if the Consent Decree has not become effective on or before December 31, 1990, the DSF Trust shall terminate on that date and the Trustee shall distribute to each Settlor who has contributed to the DSF Trust

(if any) the portion of any remaining Trust Estate in that Settlor's separate share of the DSF Trust.

9.03 Termination of Disbursement Agency. If the Consent Decree has not become effective on or before December 31, 1990, the appointment of the Trustee hereunder as disbursement agent for the initial contributions of the Class A De Minimis Settlers and the Class B De Minimis Companies in accordance with Sections 2.01 and 4.01 shall also terminate on that date. Upon such termination, the Trustee shall distribute to each Class A De Minimis Settlor and Class B De Minimis Company a ratable portion of any of such funds still held by it determined by the ratio of that party's initial contribution (as shown on Exhibit A) to the total amount of such initial contributions of all Class A De Minimis Settlers and Class B De Minimis Companies.

ARTICLE X

MISCELLANEOUS

10.01 Headings. The section headings set forth in this Agreement are included for the convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

10.02 Particular Words. Any word contained in the text of this Agreement shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individu-

al, partnership, association, company or corporation. All references to the "Trustee" shall refer to the Trustee then serving as such hereunder.

10.03 Severability of Provisions. If any provision of this Agreement or its application to any person or entity or in any circumstances shall be invalid or unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

10.04 Notices and Reports Under Agreement. Each Settlor, along with its initial contribution hereunder, shall furnish to the Trustee a mailing address and the name of the person (if any) to whose attention communications to such Settlor hereunder are to be sent. The Trustee shall compile all such addresses, together with a similar address for FLTG, Inc. and the Project Coordinator (when furnished) ("French Site Mailing List"). Any notice, report or demand required by this Agreement to be given to the Settlers or the Board Project Coordinator shall be deemed to have been properly given when mailed, postage prepaid, by registered or certified mail, to each such party as shown on the French Site Mailing List. Any Settlor or the Project Coordinator may change its address on the French Site Mailing List by delivering notice thereof in writing to the Trustee. The Trustee shall furnish copies of the French Site Mailing List to each Settlor, and shall include notices of any changes thereto

with the reports called for under Section 6.02(b) of this Agreement. Any notice required by this Agreement to be delivered to any other person or entity shall be deemed to have been properly delivered when mailed, postage prepaid, by registered or certified mail, to the person to be notified at the last known address of such person or entity, according to the records of the one giving notice.

10.05 Counterparts of Agreement. This Agreement has been executed for the convenience of the parties hereto in counterparts, any one of which for all purposes shall be deemed to have the status of an executed original.

10.06 Situs of Trusts. The situs of each of the Trusts herein established is Texas, and the laws of Texas shall control with respect to the construction, administration, and validity of each Trust and to the construction and interpretation of this Agreement.

10.07 Non-Assignability of Trust Interests. The interest of any Settlor in a Trust hereunder is not assignable except to a successor corporation or corporations, and no transfer or attempted transfer of a Settlor's interest in such a Trust shall relieve such Settlor of any of its obligations hereunder.

10.08 Alterations and Amendments. The Settlers may, by a vote of the Settlers then in existence, from time to time and at any time during the term of this Trust, alter or amend this Agreement, in whole or in part. Such alteration or amendment must be in writing and be signed by the Settlers voting to effect

such amendment. In addition, to be effective any alteration, amendment or other action under this Agreement requiring approval of the Settlers shall be approved by a two-thirds weighted vote of the Settlers, with each Settlor's vote weighted in accordance with the then applicable column of Exhibit A hereto relating to voting percentage. Only Full Settlers shall have a vote in any such matter. Prior to the Threshold Date, such votes shall be weighted in accordance with the column of Exhibit A hereto captioned "Voting Percentage-To \$100 Million" and on or after the Threshold Date, such votes shall be weighted in accordance with the column of Exhibit A hereto captioned "Voting Percentage-Over \$100 Million." The Trustee shall give notice of such action to all Settlers empowered to vote thereon as provided in Section 10.04. No such alteration or amendment, however, shall be effective without the Trustee's written consent if such alteration or amendment shall adversely affect the Trustee or interfere with its power or ability to effectuate the terms of the Consent Decree. Moreover, with respect to the DSF Trust, no such amendment may be made which would result in any Owner/Operator/Transporter Settlor contributing thereto having any beneficial interest in the Trust Estate, or which would be inconsistent with the federal income tax treatment for such Trust described in Section 10.09 below.

10.09 Nature of Trusts. The parties intend by this Agreement to establish express trusts for the sole purposes specified in Section 1.02 above. The parties further intend that

(i) the Long Term Trust shall be treated as a grantor trust for federal income tax purposes of which each Full Settlor shall be treated for such purposes as the owner of its separate share in accordance with the provisions of Sections 671, et seq. of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) the portion of the DSF Trust attributable to contributions of each Owner/Operator/Transporter Settlor shall constitute a Designated Settlement Fund within the meaning of, and to the extent provided in, Section 468B of the Code. This Agreement shall be construed accordingly, and the Trustee shall make all necessary elections and administer each of the Trusts in accordance with this intent. The parties do not intend to create any form of business association and the Trustee shall have no authority to conduct business on behalf of either of the Trusts or the Settlers. All provisions of this Agreement shall be construed and applied in accordance with the intent expressed herein.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement or caused this Agreement to be executed by a person authorized to sign on its behalf, effective as of the day and year first written above.

First Interstate Bank of Texas, N.A.,
as Trustee

By: _____
Name: _____
Title: _____

FRENCH LTD. SITE TRUST AGREEMENT
AUTHORIZATION FORM

_____ has agreed to contribute funds to the French Ltd. Site Trust Fund as a Settlor pursuant to the French Ltd. Site Trust Agreement, the terms of which are consented to and agreed to by the undersigned.

I certify that I am the duly authorized representative of _____.

Signed: _____

Name: _____

Title: _____

Date: _____

APPENDIX D

22.8518 Acres (995,424 Square Feet)

Humphrey Jackson Labor
Abstract No. 37

THE STATE OF TEXAS:

COUNTY OF HARRIS:

FIELDNOTE DESCRIPTION of a tract or parcel of land containing 22.8518 acres situated in the Humphrey Jackson Labor, Abstract No. 37, Harris County, Texas. Said 22.8518 acre tract being called a 22.481 acre tract conveyed by the Permanent School Fund of the State of Texas as recorded under File No. E 042666, Film Code No. 171-37-1549 in the Harris County Official Public Records of Real Property. Said 22.8518 acre tract of land is more particularly described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod found for the intersection point of the Northerly right-of-way line of Gulf Pumping Station Loop Road, formerly known as Houston-Crosby Road, (60-foot wide right-of-way) with the Southerly right-of-way line of U.S. Highway No. 90 (240-foot wide right-of-way);

THENCE, North 72° 34' 00" East, along the Southerly right-of-way line of U.S. Highway No. 90, a distance of 2562.26 feet to a 5/8-inch iron rod set for corner;

THENCE, South 17° 08' 33" East, a distance of 777.00 feet to a 5/8-inch iron rod set for corner located in the Northerly right-of-way line of said Gulf Pumping Station Loop Road;

THENCE, South 89° 27' 39" West, along the Northerly right-of-way line of said Gulf Pumping Station Loop Road, a distance of 2673.70 feet to the POINT OF BEGINNING; CONTAINING within these metes and bounds 22.8518 acres or 995,424 square feet of land area, more or less.

1230-10-111-100

APPENDIX E

List of Settling Defendants

FRENCH LIMITED, INC.,
FRENCH LIMITED OF HOUSTON, INC.,
LUTHER P. HENDON, INDIVIDUALLY,
GEORGE A. WHITTEN, INDIVIDUALLY,
ALLIED-SIGNAL, INC.,
AMERADA HESS CORPORATION,
AMERICAN PLANT FOOD CORPORATION,
AMOCO GAS COMPANY,
ARCO CHEMICAL COMPANY,
ARMCO INC.,
ASHLAND CHEMICAL COMPANY,
ATLANTIC RICHFIELD COMPANY,
BERWIND RAILWAY SERVICE COMPANY,
BIEHL & CO.,
BIG THREE INDUSTRIES, INC.,
BROWN & ROOT, INC.,
BROWNING-FERRIS INDUSTRIES,
CHEMICAL SERVICES, INC.
AND AFFILIATES,
CAMCO, INCORPORATED,
CAMERON IRON WORKS USA, INC.,
CELOTEX CORPORATION (THE),
CHAMBERS & KENNEDY,
CHAMPION INTERNATIONAL
CORPORATION,
CHAS. MARTIN INSPECTION
AND CONTROLS, INC.,
CHEMICAL EXCHANGE
INDUSTRIES, INC.,
CHEVRON CHEMICAL COMPANY
(for GULF OIL CHEMICALS CORP.),
CROWN CENTRAL PETROLEUM
CORPORATION,
DIXIE CHEMICAL COMPANY,
DOW CHEMICAL COMPANY (THE),
DRESSER INDUSTRIES, INC.,
E.I. du PONT de NEMOURS
& COMPANY, INC.,
EDDY REFINING COMPANY,
ETHYL CORPORATION,
EXXON CORPORATION, EXXON
CHEMICAL AMERICAS
EXXON PRODUCTION RESEARCH
COMPANY,
GATX TERMINALS CORPORATION,
GENERAL FOODS CORPORATION,
GOODYEAR TIRE & RUBBER

COMPANY (THE),
W.R. GRACE & CO.,
GULF STATES ASPHALT, INC.
HALLIBURTON SERVICES,
HERCULES, INCORPORATED,
HOECHST CELANESE CORPORATION,
HOUSTON NATURAL GAS CORP.
(DIVISION OF HOUSTON
PIPE LINE COMPANY,
HUDSON ENGINEERING CORPORATION,
HUDSON PRODUCTS CORPORATION,
HUGHES DRILLING FLUIDS,
HUGHES TOOL COMPANY,
J.M. HUBER CORPORATION,
KAISER ALUMINUM & CHEMICAL
CORPORATION,
KEITH, INC./MAINTENANCE
ENGINEERING,
KOPPERS COMPANY, INC.,
LONE STAR GAS COMPANY,
LUBRIZOL CORPORATION (THE),
MERCHANTS METALS, INC.,
MERICHEM CO.,
MILCHEM, INCORPORATED,
MITCHELL ENERGY CORPORATION,
NALCO CHEMICAL COMPANY,
NEWARK SHIPBUILDING & REPAIR
INC.,
NL INDUSTRIES, INC.,
OAKITE PRODUCTS, INC.,
OCCIDENTAL CHEMICAL CORPORATION
(Successor to DIAMOND
SHAMROCK),
OWENS-CORNING FIBERGLAS
CORP.,
PAKTANK CORPORATION,
PARKER BROTHERS & CO., INC.
(ALLIED FENCE),
PENCE CONSTRUCTION COMPANY,
PENNWALT CORPORATION,
PHILLIPS PETROLEUM COMPANY,
PLASTIC APPLICATORS, INC.,
PLATZER SHIPYARDS,
POANGRA,
PPG INDUSTRIES, INC.,
REICHOLD CHEMICALS, INC.,
ROHM & HAAS,
E.W. SAYBOLT & CO., INC.,
SOUTHERN PACIFIC TRANSPORTATION
COMPANY,
SOUTHWEST CHEMICAL SERVICES,
STAUFFER CHEMICAL COMPANY,
STEWART & STEVENSON SERVICES,
INC.,

TENNECO COMPANIES, INCLUDING
PETRO-TEX CHEMICAL CORPORATION
AND TENNECO POLYMERS, INC.
TEXACO, INC. AND
TEXAS-NEW MEXICO PIPELINE CO.,
TEXAS EASTERN PRODUCTS PIPELINE
COMPANY,
TEXASGULF INC.,
TEXAS STEEL & WIRE CORP.,
UNION OIL COMPANY OF CALIFORNIA,
and
VELSICOL CHEMICAL CORPORATION,

APPENDIX F

Conditions or Information Known to the United States

Section XVII D(3) of the Decree (Covenant Not To Sue) refers to conditions or information known to the United States. Such conditions or information consist of (1) the Administrative Record as set forth in the ROD, which appears in Appendix A of this Decree, and (2) all written material exchanged between the Settling Defendants and EPA prior to March 24, 1988.

EXHIBIT "A"

| 1. FULL SETTLORS | SHARE OF \$55 MILLION | CREDIT FOR PAYMENTS MADE | INITIAL PAYMENT | BALANCE OWING | PERCENT OF SUBSEQUENT CASH CALLS AND VOTING PERCENT | |
|------------------------|-----------------------------|--------------------------------|--------------------|------------------|--|-----------------------|
| | | | | | TO \$100 MILLION | OVER \$100 MILLION |
| ALLIED/SIGNAL | \$903,015.47 | \$290,508.95 | | \$612,506.52 | 1.66% | 1.65% |
| AMERADA HESS | \$185,170.64 | \$63,540.48 | | \$121,630.16 | 0.34% | 0.34% |
| ARCO | \$24,466,558.44 | \$9,024,604.79 | | \$15,441,953.65 | 51.65% | 51.32% |
| ARMCO | \$4,101,529.58 | \$1,319,514.72 | | \$2,782,014.86 | 7.55% | 7.50% |
| ASHLAND | \$2,561,527.13 | \$778,630.20 | | \$1,782,896.93 | 4.72% | 4.69% |
| BERWIND RAILWAY | \$25,923.89 | \$7,880.12 | | \$18,043.77 | 0.05% | 0.05% |
| BFI | \$695,470.05 | \$223,740.11 | | \$471,729.94 | 1.28% | 1.27% |
| CAMCO, INC. | \$112,954.09 | \$36,338.53 | | \$76,615.56 | 0.21% | 0.21% |
| CELANESE | \$189,799.90 | \$61,711.82 | | \$128,088.08 | 0.35% | 0.35% |
| CELOTEX | \$1,129,849.50 | \$343,445.62 | | \$786,403.88 | 2.08% | 2.07% |
| CHAMPION INTERNATIONAL | \$78,388.90 | \$24,790.22 | | \$53,598.68 | 0.14% | 0.14% |
| DIAMOND SHAMROCK | \$2,866,750.06 | \$871,413.50 | | \$1,995,336.56 | 5.28% | 5.24% |
| DIXIE CHEMICAL CO. | \$19,442.92 | \$13,160.21 | | \$6,282.71 | 0.04% | 0.04% |
| DOW CHEMICAL CO. | \$862,740.85 | \$277,552.93 | | \$585,187.92 | 1.59% | 1.58% |
| DRESSER INDUSTRIES | \$77,925.98 | \$25,069.62 | | \$52,856.36 | 0.14% | 0.14% |
| E.I. DUPONT | \$1,553,427.32 | \$472,199.63 | | \$1,081,227.69 | 2.86% | 2.84% |
| EDDY REFINING | \$6,480.97 | \$1,970.03 | | \$4,510.94 | 0.01% | 0.01% |
| ETHYL CORPORATION | \$1,920,991.04 | \$618,003.19 | | \$1,302,987.85 | 3.54% | 3.51% |
| EXXON | \$705,191.50 | \$226,867.65 | | \$478,323.85 | 1.30% | 1.29% |
| GOODYEAR | \$1,422,727.72 | \$457,706.79 | | \$965,020.93 | 2.62% | 2.60% |
| W.R.GRACE | \$3,240.49 | \$4,344.23 | | (\$1,103.74) | 0.01% | 0.01% |
| GULF OIL CORP. | \$235,783.94 | \$75,854.41 | | \$159,929.53 | 0.43% | 0.43% |
| GULF STATES ASPHALT | \$6,480.97 | \$780.00 | | \$5,700.97 | 0.01% | 0.01% |
| HALLIBURTON SERVICES | \$75,919.96 | \$24,513.48 | | \$51,406.48 | 0.14% | 0.14% |
| HERCULES | \$107,553.28 | \$34,640.73 | | \$72,912.55 | 0.20% | 0.20% |
| HUDSON ENGINEERING | \$169,739.75 | \$0.00 | | \$169,739.75 | 0.31% | 0.31% |
| HUDSON PRODUCTS | \$91,813.77 | \$0.00 | | \$91,813.77 | 0.17% | 0.17% |
| HUGHES DRILLING | \$191,188.68 | \$58,119.93 | | \$133,068.75 | 0.35% | 0.35% |
| HUGHES TOOL | \$24,689.42 | \$7,517.95 | | \$17,171.47 | 0.05% | 0.05% |
| KOPPERS | \$131,162.53 | \$39,869.82 | | \$91,292.71 | 0.24% | 0.24% |
| LONE STAR GAS | \$3,240.49 | \$1,042.35 | | \$2,198.14 | 0.01% | 0.01% |
| LUBRIZOL CORP. | \$89,499.14 | \$23,886.97 | | \$65,612.17 | 0.16% | 0.16% |
| CHAS. MARTIN CORP. | \$6,480.97 | \$2,085.00 | | \$4,395.97 | 0.01% | 0.01% |
| MERCHANTS METALS | \$19,442.92 | \$6,255.01 | | \$13,187.91 | 0.04% | 0.04% |
| MERICHEM COMPANY | \$6,480.97 | \$2,085.00 | | \$4,395.97 | 0.01% | 0.01% |
| MILCHEM INC. | \$87,956.05 | \$26,736.68 | | \$61,219.37 | 0.16% | 0.16% |
| MITCHELL ENERGY | \$21,448.93 | \$6,900.35 | | \$14,548.58 | 0.04% | 0.04% |
| NEWARK SHIPBUILDING | \$32,404.86 | \$9,850.15 | | \$22,554.71 | 0.06% | 0.06% |
| NL INDUSTRIES | \$77,154.43 | \$54,780.65 | | \$22,373.78 | 0.14% | 0.14% |
| OWENS CORNING | \$3,240.49 | \$4,354.23 | | (\$1,113.74) | 0.01% | 0.01% |
| PARKER BROTHERS | \$424,349.37 | \$128,990.21 | | \$295,359.16 | 0.78% | 0.78% |
| PENCE CONSTRUCTION | \$3,240.49 | \$985.01 | | \$2,255.48 | 0.01% | 0.01% |
| PHILLIPS PETROLEUM | \$2,466,009.94 | \$793,341.58 | | \$1,672,668.36 | 4.54% | 4.51% |
| PLASTIC APPLICATORS | \$419,720.11 | \$127,584.03 | | \$292,136.08 | 0.77% | 0.77% |
| PLATZER SHIPYARD INC. | \$6,172.35 | \$10,000.00 | | (\$3,827.65) | 0.01% | 0.01% |

| | | | | | |
|--------------------|--------------|--------------|--------------|-------|-------|
| PPG INDUSTRIES | \$678,959.00 | \$218,428.39 | \$460,530.61 | 1.25% | 1.24% |
| REICHHOLD CHEMICAL | \$43,823.72 | \$14,098.62 | \$29,725.10 | 0.08% | 0.08% |
| ROHM & HAAS | \$38,577.22 | \$10,000.00 | \$28,577.22 | 0.07% | 0.07% |
| SOUTHERN PACIFIC | \$617,235.45 | \$198,571.24 | \$418,664.21 | 1.14% | 1.13% |
| SOUTHWEST CHEMICAL | \$6,480.97 | \$1,962.60 | \$4,518.37 | 0.01% | 0.01% |
| STAUFFER CHEMICAL | \$42,126.32 | \$13,537.79 | \$28,588.53 | 0.08% | 0.08% |
| TENNECO | \$486,072.92 | \$156,375.93 | \$329,696.99 | 0.89% | 0.89% |
| TEXACO INC. | \$12,961.94 | \$4,170.00 | \$8,791.94 | 0.02% | 0.02% |
| TEXAS EASTERN | \$3,240.49 | \$4,340.76 | (\$1,100.27) | 0.01% | 0.01% |
| UNOCAL | \$6,480.97 | \$2,085.00 | \$4,395.97 | 0.01% | 0.01% |
| VELSICOL | \$200,601.52 | \$60,977.35 | \$139,624.17 | 0.37% | 0.37% |

2. CLASS A DE MINIMIS SETTLORS:

| | | | | | |
|------------------------|-------------|-------------|-------------|-------|-------|
| AMERICAN PLANT FOOD | \$16,049.94 | \$1,987.54 | \$14,062.40 | 0.00% | 0.02% |
| BIEHL & CO. | \$12,560.82 | \$0.00 | \$12,560.82 | 0.00% | 0.02% |
| BIG THREE INDUSTRIES | \$37,217.25 | \$10,694.48 | \$26,522.77 | 0.00% | 0.05% |
| CAMERON | \$54,662.84 | \$6,910.40 | \$47,752.44 | 0.00% | 0.07% |
| CHAMBERS & KENNEDY | \$10,000.00 | \$1,190.85 | \$8,809.15 | 0.00% | 0.01% |
| CHEMICAL EXCHANGE | \$18,608.63 | \$4,617.46 | \$13,991.17 | 0.00% | 0.02% |
| CROWN CENTRAL | \$10,000.00 | \$0.00 | \$10,000.00 | 0.00% | 0.01% |
| GATX | \$37,915.07 | \$4,797.29 | \$33,117.78 | 0.00% | 0.05% |
| HOUSTON NATURAL GAS | \$10,000.00 | \$1,236.28 | \$8,763.72 | 0.00% | 0.01% |
| KAISER ALUM. & CHEM. | \$10,000.00 | \$780.00 | \$9,220.00 | 0.00% | 0.01% |
| KEITH INC./MAINTENANCE | \$10,000.00 | \$0.00 | \$10,000.00 | 0.00% | 0.01% |
| NALCO CHEMICAL CO. | \$10,000.00 | \$604.96 | \$9,395.04 | 0.00% | 0.01% |
| OAKITE | \$30,239.02 | \$3,826.38 | \$26,412.64 | 0.00% | 0.04% |
| PAKTANK | \$47,917.21 | \$6,064.44 | \$41,852.77 | 0.00% | 0.06% |
| PENNWALT CORP. | \$46,521.56 | \$12,772.24 | \$33,749.32 | 0.00% | 0.06% |
| POANGRA | \$14,654.29 | \$0.00 | \$14,654.29 | 0.00% | 0.02% |
| E.W. SAYBOLT & CO. | \$76,760.58 | \$9,715.26 | \$67,045.32 | 0.00% | 0.09% |
| STEWART & STEVENSON | \$14,654.29 | \$1,814.87 | \$12,839.42 | 0.00% | 0.02% |
| TEXASGULF | \$50,708.50 | \$0.00 | \$50,708.50 | 0.00% | 0.06% |
| TEXAS STEEL & WIRE | \$25,354.25 | \$0.00 | \$25,354.25 | 0.00% | 0.03% |

3. CLASS B DE MINIMIS COMPANIES:

| | | | | | |
|--------------------|--------------|-------------|--------------|-------|-------|
| AMOCO | \$39,078.11 | \$11,663.34 | \$27,414.77 | 0.00% | 0.00% |
| BROWN & ROOT, INC. | \$30,000.00 | \$634.78 | \$29,365.22 | 0.00% | 0.00% |
| GENERAL FOODS | \$30,000.00 | \$0.00 | \$30,000.00 | 0.00% | 0.00% |
| J M HUBER | \$100,000.00 | \$0.00 | \$100,000.00 | 0.00% | 0.00% |

| | | | | | | |
|-------|-----------------|-----------------|--------------|-----------------|---------|---------|
| TOTAL | \$51,469,743.14 | \$17,347,025.13 | \$663,591.81 | \$33,459,126.20 | 100.00% | 100.00% |
|-------|-----------------|-----------------|--------------|-----------------|---------|---------|

| | | | | |
|-----------------------------------|----------------|--------|--------|----------------|
| 4. OWNER/OPERATOR/ TRANSPORTER | \$3,476,514.40 | \$0.00 | \$0.00 | \$3,476,514.40 |
|-----------------------------------|----------------|--------|--------|----------------|

| | | |
|--------------------|-------------|-------------|
| 5. EXCESS PROCEEDS | \$53,742.46 | \$53,742.46 |
|--------------------|-------------|-------------|

| | | | | |
|-------|-----------------|-----------------|--------------|-----------------|
| Total | \$55,000,000.00 | \$17,376,602.74 | \$663,591.81 | \$36,935,640.60 |
|-------|-----------------|-----------------|--------------|-----------------|

EXHIBIT B

TEXT OF CONSENT DECREE WITH EXHIBITS

(OTHER THAN TRUST AGREEMENT)

EXHIBIT C
TRUSTEE'S SCHEDULE OF COMPENSATION